



**STRATEGY
RESEARCH
PROJECT**

The views expressed in this paper are those of the author and do not necessarily reflect the views of the Department of Defense or any of its agencies. This document may not be released for open publication until it has been cleared by the appropriate military service or government agency.

**ACCESS TO THE PRESIDENT BY COMBATANT COMMANDERS:
DOES THE SECRETARY OF DEFENSE
HAVE TOO MUCH POWER?**

BY

**LIEUTENANT COLONEL KEVIN H. WINTERS
United States Marine Corps**

**DISTRIBUTION STATEMENT A:
Approved for public release.
Distribution is unlimited.**

19990608 007

USAWC CLASS OF 1999

U.S. ARMY WAR COLLEGE, CARLISLE BARRACKS, PA 17013-5050



USAWC STRATEGY RESEARCH PROJECT

**Access to the President by Combatant Commanders; Does
the Secretary of Defense have too much Power?**

by

Kevin H. Winters
LtCol USMC

Colonel Joseph R. Cerami
Project Advisor

The views expressed in this academic research paper are those of the author and do not necessarily reflect the official policy or position of the U.S. Government, the Department of Defense, or any of its agencies.

DISTRIBUTION STATEMENT A:
Approved for public release.
Distribution is unlimited.

U.S. Army War College
CARLISLE BARRACKS, PENNSYLVANIA 17013

ABSTRACT

AUTHOR: LtCol Kevin H. Winters USMC
TITLE: Access to the President by Combatant Commanders; Does
the Secretary of Defense Have Too Much Power?
FORMAT: Strategy Research Project
DATE: 7 April 1998 PAGES: 70 CLASSIFICATION: Unclassified

This paper examines one aspect of the Goldwater - Nichols Department of Defense Reorganization Act of 1986: communications from combatant commanders, through the Secretary of Defense, to the President. The 3 October 1993 firefight between US forces from Task Force Ranger and Somalia irregulars aligned with Mohammad Aideed will serve as a case study for this project. Beforehand, the combatant commander requested armor (for force protection purposes) "up the [Goldwater-Nichols] chain of command." The Secretary of Defense denied that request - but the President (the person ultimately responsible) never knew. Subsequent congressional testimony revealed that the requested armor might have made a difference. Accordingly, this paper examines the then existing chain of command processes (which had developed over the past 40 years); whether the President's constitutional function as Commander in Chief was well served by those processes; and ultimately suggests improvements to the same.

TABLE OF CONTENTS

ABSTRACT	iii
PREFACE	vii
LIST OF ILLUSTRATIONS	ix
ACCESS TO THE PRESIDENT BY COMBATANT COMMANDERS	1
THE FIREFIGHT IN MOGADISHU	3
UNOSOM I	3
UNITAF: US Intervenes	4
UNOSOM II; US drawdown in Somalia	5
The 3 October Raid	7
The Armor Request and Political Aftermath	9
THE SECRETARY OF DEFENSE AND THE POTENTIAL FOR UNCHECKED POWER	11
Genesis of Modern Secretarial Power	12
The 1958 Amendments: Consolidation of Power	15
Goldwater - Nichols: Streamlining the Chain of Command ...	19
DID GOLDWATER - NICHOLS WORK IN SOMALIA?	21
SEARCHING FOR A SOLUTION	24
CONCLUSION	29
ENDNOTES	31
BIBLIOGRAPHY	53

PREFACE

In 1993, US forces (primarily US Army Rangers) engaged Somali irregulars in a brief but bloody urban firefight. The cost was high. After the smoke cleared, even the most jingoistic Americans agreed that 18 dead soldiers and over 70 wounded was a high price to pay for a country that was supposedly enjoying the post cold war "peace dividend."

While public reaction was more political than substantive, the genesis of this paper was in 1994 when I served as Vice Chair of the International and Operational Law Department of the US Army Judge Advocate General's (JAG) School in Charlottesville, Virginia. At that time, the JAG School trained over 3000 government lawyers per year (and also hundreds of US Army commanders in "pre-command training courses). The concomitant interaction between commanders, operational lawyers, state department personnel, and academicians nurtured a lively debate on US strategic ends, ways, and means in Somalia.

During those discussions, I became interested in the then existing command and control system -- a system that somehow insulated the President from a combatant commander's request for enhanced force protection measures. If he bears the constitutional responsibility, wouldn't he be better served by such information? In other words, has Congress inadvertently eroded the President's Commander in Chief function through decades of Defense legislation?

I first addressed this topic in fulfillment of a Master of Laws course requirement at the University of Virginia School of Law (under the thoughtful mentorship of Professor John Norton Moore). Since that time, I have made significant changes to its content and format.

In addition to Professor Moore, my heartfelt gratitude extends to all members of the International and Operational Law staff at the US Army JAG School for their collective collaboration. In particular:

LTC David M. Crane, JA (retired)
CDR James P. Winthrop, JAGC, USN
LTC Richard Whitaker, JA
LTC Marc Warren, JA
LTC Mark M. Martins, JA
MAJ James P. Johnson, JA
MAJ Scott Morris, JA

Finally, I offer my utmost admiration and respect for the courage, determination, and professionalism exhibited by US forces in Somalia on 3 October 1993 (which included two Medal of Honor winners). Accordingly, I dedicate this paper to them, their families, and those who made them what they are.

LIST OF ILLUSTRATIONS

Figure 1 7

ACCESS TO THE PRESIDENT BY COMBATANT COMMANDERS

DOES THE SECRETARY OF DEFENSE HAVE TOO MUCH POWER?

"On Oct. 6, when the first reports surfaced that Aspin had refused to send armor, Clinton 'picked up the phone and called Les to find out what the hell was going on'"¹

Does the present US operational command structure sufficiently include the President as an *informed* Commander in Chief? ² Or, has Congress unintentionally eroded his constitutional role by creating a Defense Department monolith that, given the right circumstances, has too much unchecked power in controlling operational US forces? In particular, do the President's nine combatant commanders³ have sufficient access to him as their Commander in Chief?

The 3 October 1993 firefight between US Task Force Ranger and forces loyal to Somali warlord Mohammed Farah Aideed will serve as the case study for analyzing these questions. Eighteen US Soldiers died and over 70 were wounded during that engagement. At issue is the Secretary of Defense's decision to deny a pre-raid request from the US combatant commander for more force protection equipment. As will be seen, the President *never knew of the request*, and tragically, the equipment would have helped US forces on 3 October.

This analysis begins by examining the consequences of a disjointed US foreign policy in Somalia: the 3 October firefight

and the parameters of US national command relationships that possibly contributed to US losses. Called the National Military Command System,⁴ we will briefly examine the legal structure, authority, and command communication relationships between the President, Secretary of Defense, Combatant Commands, and the Chairman of the Joint Chiefs of Staff. Of interest will be the Secretary of Defense's remarkable 40-year growth in power through legislation and, arguably in Somalia, presidential detachment from foreign policy.

That is not to say the US command structure does not work well. It does. But the system at its highest levels relies, to some extent, on "force of personality" between the President, Secretary of Defense, and the Chairman of the Joint Chiefs of Staff. As long as their personal and professional relationship includes *informed* decision-making and easy access, there's seldom a problem in responding to a combatant commander's concerns. In the rare case, however, where both combatant commander and Chairman disagree with the Secretary's singular decision, it seems prudent -- as a matter of operational practicality and presidential constitutional clarity of function, for that commander's concerns to get an audience with his constitutional and statutory senior: the Commander in Chief. No such structure exists. This paper attempts to make that case.⁵

THE FIREFIGHT IN MOGADISHU

*"Aidid's men opened up on the trapped Americans from rooftops, buildings and even trees. The Rangers, armed only with machine guns and grenade launchers, were cut off and outgunned."*⁶

Both blame-seekers and apologists agree that something went wrong, terribly wrong, for US forces in Mogadishu on 3 October 1993. Even casual observers wondered why, so shortly after defeating a modern, well-equipped Iraqi army in 1991 (with so few casualties), did US forces get such a bloody nose against seemingly ragtag Somali irregulars?⁷

As we will see, the Administration's response bespoke (among other problems) a President who was largely insulated from his Commander in Chief functions by the Secretary of Defense. However, to properly understand and explore this topic, we must first examine underpinnings of US involvement in Somalia, culminating with an insight into Executive Branch decision-making in fateful days preceding the firefight.

UNOSOM I

The October 1993 firefight between US Rangers and Somali forces loyal to Mohammed Farah Aideed was but one part of a multinational saga intended to relieve Somalia of hunger, thirst, and fear that were byproducts of a 1990-1991 civil war.⁸

That war perfunctorily deposed dictator and self-proclaimed "President" Siad Barre.⁹ Resultant clan fighting spun the country into a tragic orbit of famine, lawlessness, and mob rule. Food distribution efforts by nongovernmental organizations were simply stolen and hoarded.¹⁰

On 24 April 1992, after warring Somali factions signed a cease-fire agreement, the UN Security Council approved a formal UN peacekeeping¹¹ operation in Somalia (named United Nations Operations in Somalia, or UNOSOM I).¹² Fifty unarmed UN military observers then deployed to monitor the cease-fire in Mogadishu, Somalia's war-torn capital.¹³

On 28 August 1992, however, continued hostilities prompted the Security Council to approve deploying 3,500 additional peacekeepers.¹⁴ Only Pakistan responded by supplying 500 troops. They were ineffective.¹⁵

UNITAF: US Intervenes

By 3 December 1992, as Somalia spiraled further into chaos, the UN Security Council authorized use of "all necessary means" to establish a secure environment for humanitarian relief operations in Somalia.¹⁶ A US-led Unified Task Force (UNITAF)¹⁷ of about 25,000 US military personnel and 12,000 troops from 20 other countries, deployed to accomplish this mission.¹⁸ Although

UNITAF was successful, its mission did not extend throughout all of Somalia.¹⁹ In fact, UNITAF was simply an interim step toward returning the humanitarian relief operation, in its entirety, back to UNOSOM.²⁰

UNOSOM II; US Drawdown in Somalia

On 4 May 1993, the United States relinquished primacy of the operation to its next phase. Called UNOSOM II,²¹ its commander was Turkish Lieutenant General Cevik Bir. A US Army officer, Major General Thomas Montgomery served as the Deputy Force Commander.²² During this transition, the majority of UNITAF US forces redeployed to their home bases and ships while the new multinational force composition expanded to include more countries -- with an endstrength of 28 countries and 28,603 troops by October 1993.²³

2,800 US logisticians remained under the operational control²⁴ of the UN force commander. An additional 1,300 US combat troops served as a "quick reaction force" (QRF) -- designed to provide an interim force protection supplement to UN forces who might face emergencies. The QRF remained under US command and control, with Major General Montgomery as their commander.

Initially, the transition was uneventful. But on 5 June 1993, 24 Pakistani UN troops were killed in an ambush.²⁵ The following day, the UN Security Council reaffirmed the authorization to take "all necessary measures" against those responsible for the armed attacks on UNOSOM II forces, including securing "the investigation of their actions and their arrests and detention for prosecution, trial, and punishment."²⁶ The following week, UNOSOM II forces responded with a series of raids that succeeded in capturing weapons from Somali forces, but failed to capture Mohammed Farah Aideed - the suspected leader responsible for the deaths of the Pakistani UN troops.²⁷

On 17 June 1993, the UN Security Council, through the offices of Special Representative of the Secretary General, posted a \$25,000 reward for information that would lead to Aideed's arrest.²⁸ On 24 August 1993, the United States deployed approximately 400 elite soldiers as part of a joint²⁹ task force whose mission was to apprehend Aideed and his senior lieutenants.³⁰ Named "Joint Task Force Ranger," it was commanded by Major General William Garrison - who in turn worked directly for Commander in Chief, Central Command.³¹ Figure 1 depicts US Command Relationships.³²

**UNOSOM II COMMAND RELATIONSHIPS
(US)**

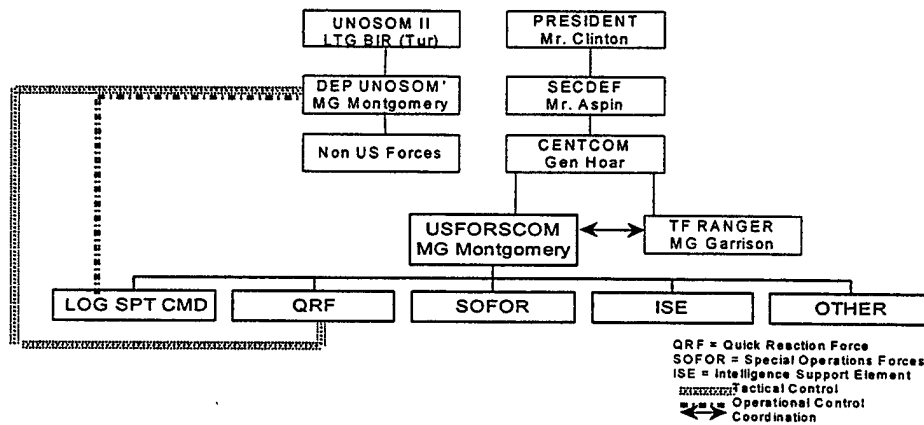


Figure 1

Task Force Ranger ultimately conducted seven raids during its deployment.³³ Their seventh and last raid, however, occurred during daylight on 3 October. Their mission: capture Aideed supporters who were supposedly meeting in the vicinity of Mogadishu's dilapidated Olympia Hotel.³⁴

The 3 October Raid

Helicopter-borne Rangers and Delta Force personnel "fastroped"³⁵ into South Mogadishu, where they quickly captured some 19 Aideed lieutenants.³⁶ Within minutes, the tactical situation worsened. Two helicopters were shot down with either 23mm cannon fire or rocket propelled grenades.³⁷ A third, which came to aid the first downed helicopter, was also hit and limped back to the Ranger compound.³⁸ Ground transportation that was to

take the prisoners back to the airport compound then came under withering fire from doorways, rooftops, and windows.³⁹

Determined not to let crash survivors or the bodies of those in the downed helicopters fall into Somali hands, a contingent of Rangers pushed toward one of the crash sites where they consolidated and waited for help.⁴⁰ The remaining Rangers, along with their detainees, took shelter in various buildings and desperately waited for relief.⁴¹

Too congested for a helicopter extract, the Rangers needed a ground force needed to do the job.⁴² It failed. Somali sharpshooters easily stopped the relief column of unarmored trucks and HUMVEEs with small arms fire, blocked intersections, and burning roadblocks.⁴³

Not until ten hours later, with the assistance of Indian and Malaysian armored vehicles, did the enhanced relief column rescue the stranded unit.⁴⁴ Eighteen US soldiers died, more than 70 were wounded,⁴⁵ and an estimated 200 Somalis were killed.⁴⁶ TV images graphically depicted Somali mobs dragging bodies of slain US soldiers through the streets.⁴⁷ The US public was shocked. And then, disturbing reports began to surface that the US commander had requested armor for force protection -- but the "the civilian leadership" had denied his request.

The Armor Request and Political Aftermath

Less than a month before the raid, the senior-ranking US officer in Somalia⁴⁸ sent a classified written request to the Secretary of Defense for more equipment.⁴⁹

Circumstances had changed. US-led UNITAF had transitioned to UNOSOM II, meaning that US unity of command coupled with over twenty thousand US troops on the ground had given way to a UN-led force, with less total personnel than UNITAF and now with only 4,500 US troops -- most being logisticians.⁵⁰

The mission and threat had changed. Disarming the Somali's had never been a mission of UNITAF. Now it was, and that was a threat to the power base of the controlling warlords. Consequently, Aideed began a program of attacking UN and US personnel with a view toward disrupting UN operations in hopes of a withdrawal. By July, he had killed 24 Pakistani and four US soldiers.⁵¹ Protection from mines and mortars were now a concern.⁵²

Accordingly, Major General Montgomery formally requested 28 M1 Abrahms tanks and 28 Bradley fighting vehicles, artillery, and AC 130 Specter gunships. His faxed request went to General Joseph P. Hoar, a Unified Commander (Commander of U.S. Central Command) who was directly in the chain of command to the Secretary of Defense and the President. General Hoar⁵³ modified

the request and forwarded it to Secretary of Defense Les Aspin via General Colin Powell, Chairman of the Joint Chiefs of Staff. Secretary Aspin denied the request.⁵⁴

After the firefight, the President, who reportedly knew nothing of his field commander's force protection concerns immediately called Secretary Aspin and "asked what the hell is going on."⁵⁵ The following day, he ordered "1,700 additional Army troops and 104 additional armored vehicles to Somalia to protect our troops."⁵⁶

Calls were made on the floor of the Senate for the Secretary's resignation;⁵⁷ lists of interrogatories were sent to the Secretary for response;⁵⁸ and tomes of special orders were introduced in outrage of his decision.⁵⁹

The Senate held hearings on the incident in May 1994.⁶⁰ Caustic articles appeared in various strata of the media,⁶¹ but none, save one,⁶² identified the true issue; that being the *President's* attenuated position as Commander in Chief. As will be discussed, the day-to-day power, through legislative fiat and presidential atrophy, was the Secretary of Defense -- a man who the then Chairman of the Joint Chiefs described as "miscast" for the job.⁶³

THE SECRETARY OF DEFENSE AND THE POTENTIAL FOR UNCHECKED POWER

*"With the transition to systematic bombing, McNamara's role changed. He soon imposed restrictions, limiting bombing to military targets and away from populated areas. Navy and Air Force commanders fumed."*⁶⁴

US casualties in Somalia didn't result from an *intentional* abdication of presidential constitutional responsibility. Instead, he inherited a structure that largely removed him from day-to-day Commander in Chief duties. And generally speaking, it should. The Presidency would grind to a halt if it were to devote all its energy to deciding military matters. In sum, delegation is *essential* for the presidency to run effectively; and as we will see, the Secretary of Defense (the President's delegee for military matters) wields unparalleled power⁶⁵ in this area. The Somalia case, in my view, asks whether we have delegated too much operational authority to the Secretary - thereby denying the President his rightful role under the Constitution as Commander in Chief. The Constitution, therefore, must be our starting point.

The US Constitution's magnificence is not only its embodiment of principles borrowed from the Enlightenment, but its unfettered simplicity in how the Framers documented those principles. For example, structure and command of the armed forces -- a complicated concept when compared to European models

at the time, was deliberately split amongst two branches of government. Congress received the power to raise an Army and a Navy and also to make rules for their governance.⁶⁶ The President, on the other hand, received "Executive" power⁶⁷ and duties as "Commander in Chief."⁶⁸

The Constitution, however, was silent regarding "chain of command" and the President's power to delegate his Commander in Chief responsibilities. And, like the rest of the Constitution, left it to the "people" -- through their elected Presidents and Congress to develop the details within this very simple modality.

Even though the President was Commander in Chief, the first Congress was quick to establish structures to delegate his responsibilities. Accordingly, Congress established the Department of War, a forerunner of the present day Department of Defense (and Army).⁶⁹ Initially administered by a "Secretary of War," the Department continued to structurally evolve for the next 150 years.⁷⁰

Genesis of Modern Secretarial Power

The monumental National Security Act of 1947⁷¹ overcame notions that existing defense structures needed no repair -- after all, the US had just emerged victorious from history's most devastating conflict. Unifying the Services under one Executive

Branch department,⁷² the Act's purpose was to provide "unified [service] direction under civilian control, but not to merge them."⁷³

The Act also created a powerful *civilian* position to lead the new Department. Titled "Secretary of Defense,"⁷⁴ the position was to "be appointed from civilian life by the President, by and with the Senate's advice and consent."⁷⁵ Therein began the Secretary's gradual-but-unrelenting growth in power.

Starting with his duties, the Act empowered the Secretary to not only "establish *general* policies and programs for the National Military Establishment and for all of the departments and agencies therein,"⁷⁶ but more significantly, to "[e]xercise *general* direction, authority, and control over such departments and agencies."⁷⁷ Performance of these duties, was, of course, limited to being "[u]nder the direction of the President and subject to provisions of the Act."⁷⁸ However, the new Secretary successfully lobbied for deletion of the word "general" from the original act citing ambiguity of the initial verbiage "*general* direction, authority, and control" over the military departments.⁷⁹ His resulting authority was now self-evident.

Subject only to the President, the Secretary of Defense directly controlled all three military departments - to include operational forces.⁸⁰ Consequently, the Secretary now assumed a place in the chain of command *between* operational commanders and

the President.⁸¹ By 1953, there was no question as to the preeminent power of the Secretary of Defense - to include legal subordination of the Chairman of the Joint Chiefs of Staff.⁸²

Command and control was also influenced by Presidents Truman and Eisenhower, who both believed in the "unified command" concept -- whereby US forces, regardless of service, served under one commander in a specific theater of operations.⁸³ Therefore, early National Military Establishment planners determined "command lines" from the President to these commanders. The result was set forth in an internal document known as the "Key West Agreement."⁸⁴ Therein, the Secretary of Defense, after consultation with the Joint Chiefs, was empowered to assign each unified command to a military department who would then act as the command's "executive agent."

The chain of command, however, was complex. Ordinarily, command would run from the President, to the Secretary of Defense, and then to the Service Secretary. But for "strategic direction and for the conduct of combat operations in emergency and wartime situations,"⁸⁵ the Service Secretary could authorize the Service Chief to act for the department. "The military chief will in such circumstances be acting in the name and under the direction of the Secretary of Defense."⁸⁶

The net result was that operational orders went from the President or the Secretary, through the filter of the Service

Secretary, who served as the executive agent for the unified command affected, who then decided whether the orders were for wartime or combat emergency situations. If "wartime," then he was to designate the military service chief as "executive agent," who would then transmit orders and direction to the unified commander somewhere in the world. From the unified commander's perspective, his boss was one of two people, the Service Secretary (for non-emergency matters) or the Service Chief. Access to the President was extremely remote because of the multi-layered command structure.⁸⁷

The 1958 Amendments: Consolidation of Power

Complexity of command channels created the need for further change to the National Security Act of 1947. In 1958, President Eisenhower urged reform of the Act's command channels, citing needs to reduce "[t]he number of headquarters between the Commander in Chief and the commander of each unified command."⁸⁸

Although Congress and the Services failed to heed the President's wisdom, some significant improvements were made when Congress passed the 1958 Amendments to the National Security Act of 1947.⁸⁹ Therein is found the basic authority for US warfighting "command lines" that existed for such crises as the

Cuban Missile Crisis, Vietnam, the "Desert One" rescue mission, and the bombing of the Marine Barracks in Lebanon.

The Act authorized the President, through the Secretary of Defense, to not only create unified and specified combatant commands,⁹⁰ but also to staff them with forces from the separate services that the President (through the Secretary) deems appropriate to accomplish the mission.⁹¹ *The Service Secretaries, and also their Service Chiefs (such as the Chief of Naval Operations and the Chief of Staff of the Army) were taken out of the direct operational chain of command. The Services had become "the support establishment" or "force providers" to the unified or specified commands.*⁹²

Note the phenomenal power gained by the Secretary of Defense in ten years. Preceding the 1947 Act, the three services were independent fiefdoms operating with the President (through his wartime "Chief of Staff") as the overall coordinator of military operations. Then, through ten years of legislation, the services were relegated to providing mere administrative, logistical, and training support necessary for the *Secretary of Defense's* (with professed Presidential oversight) operational forces. Service Chiefs were left with a tenuous connection on military operations -- that being their advisory role as members of the Joint Chiefs of Staff.

The notion of limiting the Chairman's access to the President was also apparent in the early acts. Under the 1949 amended Act, the Chairman was authorized, in cases where the Joint Chiefs disagreed on an issue, to "inform the Secretary of Defense, and when appropriate as determined by the President or the Secretary of Defense, the President."⁹³ In cases where the Joint Chiefs disagreed on an issue, the Chairman (per the 1958 amendments) shall inform "the Secretary of Defense, and, when the *President or the Secretary of Defense* considers it appropriate, the President."⁹⁴

Therefore, could the Secretary of Defense deny the Chairman's access to the President? Probably so. Seemingly, if the Chiefs disagreed on an issue, the Chairman *must* inform the Secretary. But only in cases where the Secretary (or the President) deemed it "appropriate," was the President informed. Obviously, the only time the President can deem it "appropriate" was when he already knew there was a disagreement or if he has issued standing orders as to notification circumstances. Otherwise, in cases where he didn't know, it was apparent that the Secretary had plenary power to withhold disagreements from the President. This norm, as we will see, was somewhat thematic in the Somalia armor request - but worse. In Somalia, there wasn't even the triggering "disagreement" amongst the joint chiefs - the disagreement was between those directly involved

with mission accomplishment: the combatant commander (with the Chairman as spokesman) and the Secretary. They wanted armor, he didn't, and the President never knew. Although subsequent legislation made the Chairman the President's principal military advisor - *it provided no set mechanism for presidential access.*

Indeed, no formalized access mechanism existed between the Joint Chiefs and the President. The relationship between the uniformed services and the President depended on force of personality and presidential interest. For example, the Joint Chiefs' insight wasn't aggressively sought by the Kennedy administration in the planning preceding the CIA's Bay of Pigs operation.⁹⁵ During Vietnam, commanders had limited, disjointed, and uncoordinated access to President Johnson's administration. And for good reason; what they recommended was largely ignored.⁹⁶ The failed rescue attempt of hostages in Iran and the bombing of the Marine Barracks in Beirut also demonstrated problems with military access to civilian leadership and complex chain of commands from the President to field commanders.

Congress, in part responding to criticisms from retired Chairman of the Joint Chiefs of Staff General David C. Jones, looked to fix these deficiencies and began to exercise their constitutional prerogative "to make Rules for the Government and regulation of the land and naval forces." The first order of

business was to examine the structure and command relationships between operational commanders and the civilian leadership.⁹⁷

Goldwater - Nichols: Streamlining the Chain of Command

The Goldwater - Nichols Department of Defense Reorganization Act of 1986⁹⁸ was the most sweeping Defense legislation since passage of the National Security Act of 1947. Seeking to strengthen civilian military control and "correct the organizational deficiencies that have accumulated from decades of neglect and resistance,"⁹⁹ the Act sought to "strengthen civilian authority in the Department of Defense, to improve military advice provided to the President,"¹⁰⁰ and to "place clear responsibility on the commanders of the unified and specified combatant commands for the accomplishment of missions assigned to those commands."¹⁰¹ Not surprisingly, Congress also continued to laden the Act with Secretarial oversight. Over half the Chairman's 52+ duties were now in direct support of the Secretary.¹⁰²

For our purposes, the Act recognized a need for the President and the Secretary to receive *timely and accurate professional military advice*.¹⁰³ Accordingly, the Chairman became the President's *principal* military advisor¹⁰⁴ and interface between the civilian leadership and the unified and specified combatant commanders.¹⁰⁵ But the Act was relatively silent as to

how, or in what circumstances, this advisory role was to be done.¹⁰⁶

For example, the Act permits the President to allow the Chairman to *facilitate* communications between the President, the Secretary, and combatant commands and specifically designates the Chairman as "spokesman for the commanders of combatant commands especially on the operational requirements of the commands."¹⁰⁷ But here's the catch: the Act requires the Chairman to "advise and make [such] recommendations [on behalf of the combatant commanders] to the Secretary of Defense." There is no built in trigger to notify the *President*. Most likely, it assumes the Secretary will.

Applying Somalia facts to this framework explains, perhaps, why the Chairman never insisted on jumping over the Secretary and taking the request directly to the President. By statute, the only other possible authority for him to seek access would have been his general powers as the President's principal military advisor.¹⁰⁸

Combatant commanders, although "responsible to the President and the Secretary of Defense" for mission accomplishment, were statutorily distanced from the Commander in Chief because of pervasive secretarial oversight.¹⁰⁹ They were to perform their "duties under the authority, direction, and control of the Secretary of Defense (subject to the "direction of the

President")¹¹⁰ and were "directly responsible to the Secretary for preparedness of the command to carry out missions assigned to the command."¹¹¹ No where in the Act were they given authority to *initiate* direct communications with the President -- an omission that also might have contributed to the hamstrung combat power in Somalia on 3 October 1993.

The net result: uniformed operational communications with the President was a combination of the Chairman's judgment and the President's desire to be an "involved" Commander in Chief. Personalities, therefore, mattered.

DID GOLDWATER - NICHOLS WORK IN SOMALIA?

*"I think that when young Americans are in peril, ultimately the President has to bear that responsibility. The President is the Commander in Chief."*¹¹²

Did Goldwater - Nichols "command lines" and communication systems and its progeny of implementing regulations contribute to the US losses in Somalia?¹¹³ Had the President received the armor request, would he have denied it; or, in the alternative, ceased the "get Aideed" tactics because lack of force protection equipment? We will never know. Regardless, and as succinctly stated by President Clinton in the quote above, he "has to bear that responsibility." Bottom line: armor was denied and US troops were killed or wounded because of it.¹¹⁴ The facts spoke for themselves: something wasn't right.

Recall that Major General Montgomery's request for armor, artillery, and AC-130 gunship support went up the chain of command¹¹⁵ to General Hoar, the unified combatant commander. Per Goldwater - Nichols, General Hoar assessed and modified the request, then forwarded it to the Secretary of Defense, via the Chairman.¹¹⁶

The Chairman was next. (Although one DoD regulation seemingly permits combatant commanders to communicate with the President, in reality, their communications goes (per JCS regulation) to the Secretary of Defense through the "funnel" of the Chairman of the Joint Chiefs of Staff.)¹¹⁷ The Chairman received General Hoar's request for armor, and exercised his role as communicator¹¹⁸ by presenting the request to the Secretary, who denied it.¹¹⁹

According to the President, Aspin refused to send armor "because there was no consensus among the Joint Chiefs."¹²⁰ Aspin even publicly averred that the "Pentagon . . . kind of had mixed views" on the matter.¹²¹ These assertions, say some, are of questionable veracity.¹²² Regardless, isn't that the precise situation where an Executive, i.e., presidential decision *should* be made? Certainly the system is set up for the Secretary to handle day-to-day affairs; the President simply hasn't the time to decide every military issue. But in significant disagreements between uniformed advisors and the Secretary, it makes enormous

sense to refer such matters to the President.¹²³ He was elected for such decisions. It strains credulity to believe Congress intended for the Commander in Chief to be uninformed when one of his nine combatant commanders and the Secretary of Defense disagreed on a force protection issue. Worse, did Congress *and the Presidency* (at the time of Goldwater-Nichols enactment) want the President to be uninformed when the *Chairman* and the Secretary disagreed on an important operational issue?

Unfortunately, the Act and the implementing regulations are silent on this point; such a decision -- whether to refer the matter to the President or not -- is left to force of personality of the players involved.

Goldwater - Nichols, therefore, worked -- but only to a point. The command and control structure was clear. The ground commander's request went through the proper channels -- and quickly -- to the Secretary of Defense. The Chairman, as statutory spokesman for the combatant commander, fruitlessly pleaded General Hoar's case for armor. But apparently, and without thought of going to the President, both Secretary Aspin and General Powell let the issue drop there -- and that's where the Act failed the President.

Parenthetically, the Chairman's finality was troubling, especially given his belief Aspin was "miscast" as Secretary of Defense.¹²⁴ The Chairman recalled,

I had been urging Aspin for weeks to demand a policy review to find a way out. He, in turn, was frustrated that his policy team so far had produced nothing usable. Still, with our commander on the ground pleading for help to protect American soldiers, I had to back him . . . with only three days left in my term, I was in Les Aspin's office making one last pitch to give Tom Montgomery the armor he wanted.¹²⁵

Although frustrated, he conveys no thought of taking the issue to the President. Perhaps the Bush - Cheney years of relatively conflict-free working relationships (probably borne more of personality compatibility than of statutory and regulatory structure)¹²⁶ had not prepared him for such a scenario. Regardless, a critical decision was made on behalf of the Commander in Chief -- but without his knowledge.

SEARCHING FOR A SOLUTION

Les Aspin, says a writer, was "fired from a job he spent a career in getting." 127

One could respond (with condolences) that US casualties in Somalia were aberrational -- simply the combination of bad luck and the "price of doing business" as the world's remaining superpower. While such a response satiates the urge to "sound byte" and "compartmentalize" events with neatly packaged rhetoric, it does nothing, unfortunately, to improve the way we do business. And that's where we remain. Indeed, doing nothing to improve our existing structure has its political advantages.

Most simply, the status quo insulates our constitutional Commander in Chief from the strategic details of military operations. Consequently, the Presidency is "distanced" from consequences of military operations gone bad. Indeed, Secretary Aspin quickly "accepted responsibility"¹²⁸ and eventually stepped down from office. That a President would consciously take such a Machiavellian view, however, is doubtful -- especially when lives are at stake.

Consider, as an alternative, allowing combatant commanders to have more access *to the President*. After all, the law tasks *only* these nine commanders with the responsibility of accomplishing missions tasked by the President or the Secretary (with the approval of the President). It is these commanders -- and no one else, who best know what the needs of their forces are given the mission assigned. Further, by refining lines of communication between these commanders and the President, we enhance his constitutional fulfillment of Commander in Chief duties.

Under the present system, however, a commander's request for force protection equipment enjoys no statutory or regulatory right of access to the President. *At best*, the Secretary or *maybe* the Chairman would brief his case to the President -- *but that decision is discretionary*. And therein lies the problem -- force of personality, vice structure, dictates the outcome.

Neither the Chairman nor the Secretary carries the statutory responsibility of accomplishing the President's assigned operational missions.¹²⁹ Therefore, it would be constitutionally efficient for the Presidency to have a regulatory mechanism that would allow a commander, like General Hoar (the unified combatant commander in Somalia), to:

- 1) require the Secretary or the Chairman to brief the issue to the President (or perhaps his National Security Advisor (NSA)) on behalf of the combatant commander; or
- 2) brief his request directly to the President (or NSA) (today's technology permits this to be easily done).

In military culture, a subordinate's "bypassing" of a superior is nothing new. In fact, statutory and regulatory systems are in place to do just that. For example, the Naval Service allows a subordinate to make requests, reports, and otherwise communicate *directly* to his or her "commanding officer" subject to the commanding officer's time, place, and manner restrictions.¹³⁰ Similar statutory provisions exist for subordinates to "jump" his commanding officer when he or she believes that that commanding officer has committed a "wrong" against that subordinate.¹³¹ The reasons these systems exist, of course, is to promote greater military efficiency by keeping decision-makers honest through the "check" of oversight. The same logic, it seems, should permit a combatant commander to take

his concerns, when appropriate, "over" the Secretary to the Commander in Chief. As President Truman once remarked, "The buck stops here."¹³²

Such a proposal wouldn't affect, in the larger sense, the way business is already done. The Chairman would still be the President's principal military advisor and overall spokesman for combatant commanders. The Secretary would still be the combatant commander's immediate superior. *But for situations where the combatant commander (or the Chairman) feels that the Secretary's decision affects the ability of that commander to accomplish the mission (or otherwise places the safety of his force in unnecessary jeopardy), he (they) should have the right to clarify the matter with the Commander in Chief.* If the Commander in Chief agrees with the Secretary's decision, so be it. The combatant commander is then duty-bound to obey such an order.

The proposed solution would not be onerous on the Presidency. Only nine unified combatant commanders would have this right. Of those nine, only five -- the *regional* unified combatant commanders - would be the likely users due to the nature of their missions. Moreover, because of the generally smooth relationships between the Secretary of Defense and combatant commanders, the likelihood of this option being exercised often is rare. Variations of this theme might include:

- require the Secretary to inform the President when he denies a request from a commander that involves force protection;

- require the Secretary to inform the President when a unified combatant commander (or the Chairman) insists that he (the Secretary) validate the decision with the President; and

- require the Chairman of the Joint Chiefs of Staff to inform the President when there is a conflict between a combatant commander and the Secretary. The Chairman must inform the President when the unified combatant commander insists, otherwise it is left to the Chairman's discretion as the President's principal advisor.

The last strategy, that the *commanders* dictate those situations where he needs a presidential decision, *seems* most compelling. After all, it's the commander who is statutorily responsible to the President for the performance of the mission. Nevertheless, such a trigger would again suffer from the frailties of personal discretion. Sounder policy would require that *events* dictate a presidential notification, e.g., conflict between the Secretary and a combatant commander *requires* presidential notification.

Such a policy would easily flow from existing Goldwater - Nichols framework wherein "chain of command" runs from the President to the Secretary of Defense and from the Secretary of Defense to the unified combatant commander.¹³³ By legislative amendment (Goldwater - Nichols II?) or Executive Order, the new policy would strengthen the President's constitutional

responsibilities and also promote operational efficiency within the combatant commands.¹³⁴

CONCLUSION

*"The President admitted that he had not focused enough on the UN resolution back in June that put us on a collision course with Aidid."*¹³⁵

What this paper proposes, therefore, is a minor "tweak" to an already sound structure. Such a proposal (that the nine combatant commanders have a "right" to Presidential access in certain circumstances), makes both constitutional and operational sense. Unencumbered communications between the President and his nine combatant commanders on critical issues reinforces the President's constitutional responsibility as Commander in Chief and the combatant commander's statutory responsibility (to the President) for mission accomplishment. Sadly, the rare and strange circumstances presented by our Somalia mission revealed the statutory erosion of presidential involvement in military operations at the strategic level. No doubt there was error in placing a ground commander in harm's way and then denying him force protection equipment. If there was to be such a denial, then it should've been made by the same office that gave him the mission -- the Commander in Chief -- and not a functionary acting independently and unaccountable to the electorate. In a Government purportedly designed under a series of "checks and

balances," the present structure allowed the Secretary of Defense to operate relatively unchecked. The above proposal, therefore, restrains secretarial autonomy by refocusing the President's constitutional function.

We should do this with corrective legislation, i.e., by improving upon Goldwater - Nichols's brilliance. The legislation should have a threefold approach: continued emphasis of civilian control of the military (but not at the expense of the President's *command* function); protection of the President's constitutional *command* function; and military operational efficiency.

The Constitution, however, should be the center of analysis for any proposed change. For starters, congressional delegation (two centuries worth) of the President's Commander in Chief *functions* does not relieve him of his constitutional *responsibilities*. That responsibility remains undelegable, whether overtly, or by legislation with unintended consequences. And that is where constitutional vigilance becomes important; we owe the Presidency and those commanders who toil in harm's way nothing less.¹³⁶

Word Count: 5964

ENDNOTES

¹ Barton Gellman, "The Words Behind a Deadly Decision," The Washington Post, 6 October 1993, A1.

² U.S. Constitution, Article II. Consequently, this paper will not address the larger issues of the inherent conflict between the Executive and the Legislature regarding commitment of US forces. Instead, its focus is upon *one* aspect of Executive Branch control of military forces -- that being the relationship between the President, Secretary of Defense, Unified Combatant Commanders, and to some degree, the Chairman of the Joint Chiefs of Staff.

³ The term "combatant command" means a unified (a military command that has broad, continuing missions that is composed of forces from two or more services) or a specified command (a military command that has broad, continuing missions that is composed of forces from a single service.) Goldwater - Nichols Department of Defense Reorganization Act of 1986, Pub. L. No. 99-433, 100 Stat. 992, 993, 1012 (codified as amended in scattered sections of Title 10, United States Code) [hereinafter Goldwater - Nichols]. U.S. Atlantic Command, U.S. Central Command, U.S. European Command, U.S. Pacific Command, and U.S. Southern Command are the unified combatant commands based on *geographic area*. U.S. Space Command, U.S. Special Operations Command, U.S. Strategic Command, and U.S. Transportation Command are unified combatant commands based on *function*. Armed Forces Staff College, The Joint Staff Officer's Guide 1997, Armed Forces Staff College Publication 1 (Norfolk, VA: Armed Forces Staff College 1997), 2 - 20 [hereinafter AFSC Pub. 1].

⁴ The Priority Component of the worldwide military command and control system designed to support the National Command Authority and Joint Chiefs of Staff in the exercise of their responsibilities. Office of the Chairman of the Joint Chiefs of Staff, Department of Defense Dictionary of Military and Associated Terms, Joint Chiefs of Staff Publication 1-02 (Washington, D.C.: Office of the Chairman of the Joint Chiefs of Staff, 23 March 1994), 254 [hereinafter Joint Pub 1-02] .

⁵ Accordingly, this paper accepts the following premises as true:

- The US command and control system failed the President prior to September and October 1993 in US military operations in Somalia;
- One significant part of the failure was lack of knowledge by the President of his commander's concerns for more equipment for force protection purposes;
- This lack of knowledge was caused by a system or a culture that prevents access by operational commanders to the President; and finally
- Those who have access contribute to Executive decision-making.

⁶ Louise Lief, Bruce B. Auster, Todd Shields, and Sam Kiley, "What Went Wrong in Somalia?," U.S. News & World Report, 18 October 1993, 33.

⁷ Some questions were understandably pointed and loaded with emotion. For example, Mr. Robert Joyce, Vietnam veteran, and father of a slain Ranger, asked the following questions in sworn testimony before the Senate:

In other words, don't just examine the actions of military field commanders. They had the unenviable task of having to implement a flawed mission. They cannot answer the questions the White House has left unresolved: And these are questions I would want asked:

Who changed our mission in Somalia from one of humanitarian relief to one of direct combat?

Why did they do it?

Why did we reduce our forces in Somalia from 30,000 to less than 5,000, and then launch offensive operations?

As you know, the vast majority of those remaining troops were in support units -- not combat units.

Who decided capturing Mohammed Farad Aidid was in our national interest?

Was it President Clinton, or did the Secretary General of the United Nations manipulate that decision?

If Boutros-Ghali extracted that decision from the administration-- if he put out a contract on Aidid and President Clinton took it - then I contend that the President abdicated his constitutional and moral responsibility as commander-in-chief.

Why was only one company of Rangers sent to capture Aidid?

How would they be reinforced?

Why was the Specter gunship not available to them?

Why were they denied armor?

US Military Operations in Somalia, Hearings Before the Senate Armed Services Committee, 103rd Cong., 2d Sess. (1994) (statement of Larry E. Joyce, veteran, and father of the late US Army Ranger, Casey Joyce, US Army) reprinted in Federal News Service, 12 May 1994.

⁸ Kenneth Allard, Somalia Operations: Lessons Learned (Washington, D.C.: National Defense University Press, 1995), 13.

⁹ Ibid.

¹⁰ So dangerous was Mogadishu, that US Ambassador Jim Bishop of the US Embassy there was forced to request US military assistance to evacuate embassy personnel due to repeated attempts by "rebel forces" to breach the embassy walls. So perilous was their situation, that embassy security personnel, out of self-defense, had to kill some of those trying to penetrate the embassy compound. Having closed Mogidishu's airport, the city had dissolved to anarchy. Government, by western standards, had ceased to exist; instead, armed bands led by "warlords" controlled the city. Consequently, forces enroute to Desert Shield were diverted to rescue the ambassador, US embassy staffers, and diplomats from 31 other countries -- to include the Soviet Union. Called operation "Eastern Exit," a naval task force launched 2 CH-53 helicopters 460 nautical miles from shore to effectuate the rescue. Refueling twice at night over the Indian Ocean -- where a refueling mishap drenched the Marine passengers on one aircraft with 25 to 100 gallons of aviation fuel, they nonetheless continued the harrowing mission on to the embassy compound and began evacuating the staff immediately. (When on their landing approach, the crews observed mobs of Somalis -- perched on ladders -- on the embassy walls.) CH 46 helicopters began arriving later that day -- after Ambassador Bishop successfully bribed a Somali clan leader (with car keys and cash) to not attack the helicopters. Evacuees were flown to the USS Guam where they were processed (and the wife of a foreign ambassador gave birth to a son) and later transported to a safehaven in Muscat, Oman. Coinciding with the departure of the last helicopter from the US embassy compound, Somali mobs stormed the area and pillaged the complex. For an excellent and objective account of the operation, see Adam B. Siegel, Eastern Exit: The Noncombatant Evacuation Operation (NEO) From Mogadishu, Somalia in January 1991 (Washington, D.C.: Center for Naval Analysis, 1992).

¹¹ Called "Peacekeeping" per Chapter VI of the UN Charter (Peaceful Settlement of Disputes), it commands parties to resolve their disputes through "negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement . . . or other peaceful means of their choice." U.N. Charter, article 33 (1). Per article 36 (1), the Security Council "may recommend appropriate procedures or methods of adjustment." Ibid.

¹² The Security Council, considering the request by Somalia . . . [and] taking note of the signing of the cease-fire agreements in Mogadishu on 3 March 1992 . . . [d]ecides to establish under its authority, and in support of the secretary-general in accordance with paragraph 7 below, a United Nations Operation in Somalia (UNOSOM).

. . . .
[The Security Council] requests the Secretary-General immediately to deploy a unit of 50 United Nations observers to monitor the cease-fire in Mogadishu in accordance with paragraphs 24 to 26 of the Secretary-General's report. S.C. Res. 751, U.N. SCOR, 3101 mtg, U.N. Doc. S/RES/751 (1992) [hereinafter S.C. Res. 751].

¹³ S.C. Res. 751, *supra*.

¹⁴ "The Security Council . . . alarmed by the continued sporadic outbreak of hostilities in several parts of Somalia leading to continued loss of life and destruction of property, and putting at risk the personnel of the United Nations, non-governmental organizations and other international humanitarian organizations . . . *authorizes the increase in strength of the United Nations operation in Somalia* (UNOSOM) and the subsequent deployment as recommended in . . . the Secretary-General's report." (Emphasis added.) S.C. Res. 775. SCOR, 3110 mtg., U.N. Doc. S/RES/775, (1992). S.C. Res. 775 does not, however, authorize UN Forces to conduct any type of "enforcement" operations. The tenor and spirit of the Resolution was, therefore, to urge Somali factions to respect UN forces, and for UN forces to continue their humanitarian relief efforts.

¹⁵ Once the Pakistani commander realized the gravity of situation, and also faced with increasing violence from Somali warlords, he decided to "hunker down" his unit at Mogadishu's airport. The White House, Report to the Congress on US Policy in Somalia, 13 October 1993, 11 [hereinafter, Report to Congress on Somalia]. In the meantime, as more food became available through the airlift and NGO activity increased, relief supplies were increasingly hijacked by armed bandits and Somali "officials." By November 1992, an estimated 60 to 80 percent of the relief food was being looted by bandits or diverted by corrupt authorities before reaching the desperate population. US participation in UNOSOM I, called "Operation Provide Relief," involved providing transportation to Pakistani peacekeepers, humanitarian aid workers, and a massive airlift of supplies. The airlift, which used Mombassa, Kenya as its staging platform, delivered over 19,000 metric tons of food. Another 338,000 metric tons were delivered by sea. *Ibid*.

¹⁶ S.C. Res. 794, SCOR, 3145th mtg., at 3, U.N. Doc. S/RES/794 (1992) [hereinafter S.C. Res. 794]. The rationale for "all necessary means" -- whereby the Security Council may, per Chapter VII of the UN Charter, authorize member states to enforce provisions of the Charter against another State, was found on page 2 of the Resolution.

Dismayed by the continuation of conditions that impede the delivery of humanitarian supplies to destinations within Somalia, and in particular reports of looting of relief supplies destined for starving people, attacks on aircraft and ships bringing in humanitarian relief supplies, and attacks on the Pakistani UNOSOM contingent in Mogadishu *Ibid*.

This authorization came in response to a US offer to take the lead in organizing and commanding such an operation. U.S. Military Operations in Somalia, Capitol Hill Hearing with Defense Department Personnel, Hearings Before the Senate Armed Services Comm., 103d Cong., 2d Sess. (1994) (statement of Senator Nunn (D-GA), Chairman, SASC) *reprinted in Federal News Service*, 12 May 1994 [hereinafter, *Senate Hearings*]. The Senate hearings are an excellent overview of US involvement in Somalia -- to include testimony from the commanders involved in the 3 October 1993 firefight.

¹⁷ Senate Hearings, statement of Senator Nunn, *supra*.

¹⁸ Report to Congress on Somalia, 12, *supra*. Most Americans remember this operation's genesis when US Marines landed (in the glare of media spotlights), on the shores of Somalia in December 1992. Commanded by US Marine Corps Lieutenant General Robert Johnson, UNITAF was successful in accomplishing its mission of establishing a secure environment for humanitarian relief operations.

¹⁹ Senate Hearings, statement of Senator Nunn, *supra*. UNITAF was also synonymous with Operation Restore Hope. Ibid.

²⁰ S.C. Res. 794, para 13, required the Secretary General to submit a plan to the Security Council to ensure "that UNOSOM will be able to fulfil its mandate upon the withdrawal of the unified command."

²¹ Report to Congress on Somalia, 12, *supra*.

²² Ibid.

²³ Ibid., 26, 27. Peak troop strength during UNITAF was 37,629 troops from 21 countries. US contribution: 25,074; non-US: 12,555. Ibid.

²⁴ Operational control, by US standards, is not necessarily the same as "command" or "command authority" (COCOM). Command is a concept that embraces the legal authority of a commander to lead and an obligation of subordinates to follow lawful orders. Constitutionally, the President can never abrogate his Article II function of "commander in chief." US forces, may, however, be under the operational control of an allied officer -- but always subject to the overall "command" of the President. See The White House, National Security Strategy of the United States (1994), 22. See also Stewart M. Powell, "American Troops -- American Command," Air Force Magazine, January 1994, 46; and The Joint Chiefs of Staff, Unified Action Armed Forces (UNAAF), Joint Pub 0-2 (Washington, D.C.: Joint Chiefs of Staff, 24 February 1995), III-5 – III-9 [hereinafter Joint Pub 0-2].

²⁵ Senate Hearings, statement of Senator Nunn, *supra*.

²⁶ S.C. Res. 837, SCOR, 31st mtg., at 3, U.N. Doc. S/RES/837 (1993) [hereinafter S.C. Res. 837] *reprinted in Department of State Dispatch*, Vol. 04 No. 26, 28 June 1993. The resolution also condemned "the use of radio broadcasts, in particular by the USC/SNA [United Somali Congress], to incite attacks against United Nations personnel . . . and urged member states "to contribute, on an emergency basis, military support and transportation, including armored personnel carriers, tanks and attack helicopters, to provide UNOSOM II the capability appropriately to confront and deter armed attacks . . ." Ibid. (Emphasis added.)

²⁷ President's Letter to Congressional Leaders on Somalia, Weekly Compilation of Presidential Documents, Vol. 29, 1216, 1 July 1993. US forces suffered one minor injury, even though US aircraft, as part of the US QRF, conducted extensive air attacks, "followed by search and clearing operations on the ground by non-U.S. UNOSOM II military personnel." Ibid.

²⁸ Ibid., See also, George J. Church, "Anatomy of a Disaster," Time, 18 October 1993, 40, 41.

²⁹ "Joint" is a doctrinal term of art in the US armed forces, which means an organization composed of personnel from two or more military departments. In the general sense, joint "connotes activities, operations, organizations, etc., in which elements of more than one military department of the same nation participate." AFSC Pub.1, 0-22.

³⁰ Senate Hearings, statement of Senator Nunn, *supra*. The deployment came on the heels of four deaths of US soldiers caused by a remotely detonated landmine in Mogadishu. Lief, 33.

³¹ Ibid., "The US QRF and other US combat personnel in Somalia are *not* in the UNOSOM chain of command. They serve under the command and operational control of the USCINCCENT (Commander and Chief, Central Command). Tactical control of the QRF is delegated from USCINCCENT to General Montgomery, who is authorized to utilize the QRF in situations that require emergency employment of immediate combat power . . ." Report to Congress on Somalia, 13,14, *supra*.

³² Allard, 27.

³³ Report to Congress on Somalia, 14 *supra*, "netting arms caches and several leaders of the forces hostile to the UN." *Ibid*.

³⁴ Church, 40.

³⁵ Technique whereby heliborne soldiers exit a hovering helicopter by sliding down ropes. Kent DeLong and Steven Tuckey, Mogadishu! Heroism and Tragedy, (Westport, CT: Praeger, 1994), photo and caption adjoining title page.

³⁶ *Ibid.*, Lief, 33. DeLong cites RPG fire alone. DeLong, 6.

³⁷ *Ibid*.

³⁸ DeLong, 15-18.

³⁹ *Ibid.*, Senate Hearings, statement of Lieutenant General Montgomery, *supra*.

⁴⁰ *See* "President's Address to the Nation on Somalia," Weekly Compilation of Presidential Documents, Vol. 29, 2022, 7 October 1993.

⁴¹ Church, 40.

⁴² Larry King Live 9:00 pm ET (CNN television broadcast, 29 December 1993, statement of Chief Warrant Officer Michael Durant, Transcript # 1004) [hereinafter Durant]. Durant's helicopter was shot down during the raid; his crew killed; and he was wounded and captured. *Ibid*.

⁴³ Church, 40. One writer is adamant that these vehicles were inadequate for the task:

Unfortunately, Secretary of Defense Les Aspin had turned down desperate requests from the American commanders in the field for U.S. armored vehicles the month before. Despite repeated appeals for these vehicles, which could have easily and quickly ended this whole nightmare, Aspin was convinced that politically, American armored vehicles would send the wrong message to the Somalis. He therefore repeatedly denied these requests from his field commanders and even from General Colin Powell, the Chairman of the Joint Chiefs of Staff.

As a result of the secretary's fateful decision, desperate hours were lost as arrangements continued to be made with other United Nations forces to use their vehicles. It was during these precious moments that Corporal James Smith lay bleeding to death in a slum shanty at Crash Site One. The necessary armored rescue force was not yet possible. DeLong, 63.

⁴⁴ *Ibid.*, 41.

⁴⁵ Senate Hearings, statement of Senator Nunn, *supra*.

⁴⁶ Church, 41, *citing* estimates from the International Committee of the Red Cross.

⁴⁷ Lief, 33.

⁴⁸ Major General Thomas Montgomery was Commander of the Quick Reaction Force, and Deputy Commander, UNOSOM II.

⁴⁹ Senate Hearings, statement of Lieutenant General Montgomery, *supra*.

But I also know that there is specific interest in the rationale behind my request for armor in the September timeframe. In August we experienced an increase in the tempo of militia attacks and a change in the nature of these attacks. Specifically, we saw the use of mines in the first time, which resulted in the loss of our four brave military policemen, and an increase at the same time in the use of anti-tank weapons. I was increasingly concerned about the vulnerability of the light truck-mounted forces, both logistic and quick-reaction force. The clear intent behind my request was to improve my ability to protect the entire force, and to be able to reach out and assist any element or base in trouble. While this request was not made explicitly for Task Force Ranger support, it implicitly included the quick-reaction forces' capability to back up Task Force Ranger, should that be required.

We could only speculate what difference this armor would have made had it been available. In my opinion, had it been available it would have reduced the time it took to reach Task Force Ranger. The M1-A1 tank would have been invulnerable to the rocket-propelled grenade fire of the kind used by the militia, and the Bradley fighting vehicles would have been less vulnerable than the Malaysian vehicles. This force would have significantly increased firepower and speed. There is a misperception that Task Force Ranger's casualties mounted while they were in the defensive position around the downed aircraft. In fact, that is not the case. The Ranger's casualties would not have been fewer, but the relief force had to fight its way in, and it is possible they may have had fewer casualties. *Ibid*.

⁵⁰ Report to Congress on Somalia, 12, *supra*.

⁵¹ Senate Hearings, statement of Lieutenant General Montgomery, *supra*.

⁵² *Ibid*.

⁵³ General Hoar, though reportedly never a proponent of "get Aided" apparently recognized the real danger posed to a field commander who perceives lack of protection, modified the original request to "4 M1 Abrams and 14 Bradley fighting vehicles and sent the request to the Secretary of Defense. There, the Secretary denied the request -- even though General Colin Powell, Chairman of the Joint Chiefs of Staff presented the issue twice to him." Gellman, A1.

⁵⁴ White House Press Briefing on Somalia (CNN television broadcast, Transcript # 233 - 10, 7 October 1993). The Secretary explained:

General Montgomery had made a request that- for some additional armor of four tanks and about 14 Bradley fighting vehicles, plus some artillery. He made that request. General Hoar looked at the proposal. He scrubbed it, took out the artillery part and sent the situ- the proposal forward. General Powell and I discussed it on several occasions. I found that the views in the Pentagon were kind of mixed on the issue, as to whether we ought to grant that Had I known at that time, what I knew after the events of Sunday, I would have made a very different decision. I saw that they could have been used very usefully, after the events on Sunday. *As I say, this is my decision. Somebody has to make the decision. This is the decision that I get paid for and I made the decision as best I could with the information and the knowledge that I had, at the time.* (Emphasis added.) *Ibid*.

⁵⁵ Gellman, A1.

⁵⁶ See "President's Address to the Nation on Somalia," Weekly Compilation of Presidential Documents, Vol. 29, 2022, 7 October 1993.

⁵⁷ "Call for Resignation of Defense Secretary Les Aspin," statement of Representative Archer (R-Texas), Federal News Service, 28 October 1993.

⁵⁸ *The Request for Armor for U.S. Forces in Somalia*, 139 Cong. Rec. S 15198 (1993) (statement of Sen. D'Amato). For example, this is a letter from Senator D'Amato and Senator Brown sent to Secretary Aspin on 6 October 1993:

Dear Mr. Secretary: We write today seeking information concerning a published report that the U.S. commander in Mogadishu was denied armor he requested to better protect his troops. This critical question demands a quick, clear, and forthcoming answer as soon as possible. Specifically, The Wall Street Journal reported today that Army Major General Montgomery, the commander of U.S. forces in Somalia, had requested an additional battalion of armored troops, including 55 tanks or armored personnel carriers. The paper further states that you "... declined at the time to send the armored troops. ..." Furthermore, the article notes that it was only after Sunday's fighting, which more than doubled total U.S. casualties in Somalia, that the Pentagon acted to fulfill the earlier request. You reportedly denied the commander's request, fearing some kind of "backlash" from Congress or the public. If this report is accurate, did you consult with any of your former colleagues in Congress before reaching such a conclusion? Did the U.S. commander in Somalia ask for armored reinforcements? What did he ask for, specifically? Did his request reach your desk? Did you make a decision on the request? What was that decision? If you denied the request, why did you deny the request? If that was the U.S. commander's request then, how does deployment of a smaller force now, under clearly more dangerous circumstances, meet the force protection needs he identified?

Is it true that it took more than ten hours from the beginning of the Rangers' raid to the time the relief force reached their position? We appreciate your kind attention to this important matter and look forward to receiving your written responses to these questions as soon as possible.

Sincerely,
Hank Brown, U.S. SENATOR. Alfonse D'Amato, U.S. SENATOR.

⁵⁹ See e.g., "United States Policy in Somalia," Congressional Record, vol. 139, H 10287 (1993) (statement of Rep. Dornan).

⁶⁰ Hearings were held in abeyance until May -- respecting the Chairman of the Joint Chiefs of Staff request not to hold hearings until all US forces were out of Somalia.

⁶¹ The below article, and Barton Gellman's of The Washington Post, *supra*, contributed to the public outcry and subsequent rancor in Congress. (They are significant because they quote information not readily available to the public -- even today.) Some Congressman and Senators viewed them with such significance that they were included in the congressional record. See e.g., Congressional Record, vol. 139, S15198, 5 November 1993 (statement of Senator D'Amato).

U.S. casualties in Somalia this week might have been far lighter if a request made last month by the U.S. commander there for additional armored protection had been acted on by Defense Secretary Les Aspin, Army officials said.

In early September, Army Maj. Gen. Thomas Montgomery, the deputy commander of the United Nations military force in Somalia and commander of the U.S. contingent there, told his superiors in the U.S. that he needed a battalion of armored troops -- that is, about 500 to 800 personnel carriers -- to protect the light infantry already there. The request, in somewhat reduced form, was relayed by Marine Gen. Joseph Hoar, head of the U.S. Central Command, which oversees Somalia, and forwarded to the Joint Chiefs of Staff.

The disclosures could aggravate Congress's already sour mood over the Somalia situation. The Senate Appropriations Committee Chairman Robert Byrd has vowed to press for a vote this week on a cutoff of funds for this mission. The Clinton administration is anxious for

more time, and the president is scheduled to meet today with top national security advisers and military leaders in the expectation of announcing a policy decision soon.

While Gen. Montgomery's request for armored troops was never formally rejected, it wasn't acted on either, despite extensive discussions down the chain of command. Frustrated by the inaction, senior Army officers at least once informally prodded the staff of the Joint Chiefs for action, an Army officer said. Mr. Aspin declined at the time to send the armored troops after receiving conflicting advice from Gen. Colin Powell and other members of the Joint Chiefs, a Pentagon official said.

Others familiar with the situation said there was little sense of urgency at the Pentagon when the request arrived. And the need for the armored vehicles wasn't as clear last month as it is now, partly because the forces of Somalia warlord Mohammed Aidid hadn't yet begun to show how adept they could be at shooting down U.S. helicopters. In addition, they said, commanders on the ground always ask for more resources than they really need.

However, in the wake of Sunday's fighting, which more than doubled the number of U.S. combat deaths in Somalia, the Pentagon acted quickly to fulfill Gen. Montgomery's request. Mr. Aspin ordered the deployment of four heavy tanks and 14 Bradley Fighting Vehicles and other equipment making up about one-third of what the general asked for last month.

Mr. Aspin's failure to act on Gen. Montgomery's request is already provoking members of Congress, irate over the seven-hour delay that occurred Sunday before a group of U.S. troops were rescued in downtown Mogadishu. The bulk of the nearly 100 casualties that the U.S. forces suffered in the Somali capital occurred during those seven hours before U.N. forces were able to rescue a group of 90 U.S. Army Rangers pinned down under heavy fire without armored protection. The U.S. was forced to rely on Pakistani and Malaysian armored vehicles to rescue the Rangers because it had no tanks of its own. About 70 of the 90 rangers were killed or wounded in the firefight.

The nervousness in Congress was evident yesterday afternoon during a crowded closed-door Capitol briefing with scores of lawmakers and high administration officials. Defense Secretary Aspin and Secretary of State Warren Christopher intended to consult with Congress on the Somalia policy, but the format and lack of specific answers only angered members and reinforced the perception that the mission's goals remain unclear.

The pressure now is for the White House to narrow the American mission in order to expedite withdrawal. Another alternative, calling for a larger buildup, is favored by some prominent lawmakers who fear the U.S. would otherwise be seen as deserting the U.N. But this would require a consensus and resolve that didn't show itself yesterday.

"Either have a buildup or get out as soon as possible," declared Rep. John Murtha (D., Pa.), chairman of the House Appropriations defense subcommittee. Senate Majority Leader George Mitchell said: "I'd be amazed if the Senate voted for an immediate withdrawal as long as we have hostages over there."

Among Republican conservatives, there was open hostility. And while Senate GOP Leader Robert Dole argued to give Mr. Clinton until October 5 to spell out his goals rank-and-file members were clearly frustrated.

"Not a chance," said Rep. Harry Johnston (D., Fla.), who heads the House Foreign Affairs Africa subcommittee, when asked if a majority in the House would vote to sustain funding for the Somalia mission. Thomas E. Ricks and David Rogers, "Plea Last Month for Armor in Somalia Was Ignored in the United States, Army Aides Say," The Wall Street Journal, 6 October 1993, A3.

Others simply argued that US involvement in Somalia "had no policy underpinnings." Weber, Vin, "A Crisis of Competence," National Review, 15 November 1993, 27.

⁶² The President is part of the civilian leadership team known as the "National Command Authority" (NCA) it consists of the "President and the Secretary of Defense or their duly deputized alternates or successors." Office of the Chairman of the Joint Chiefs of Staff, Department of Defense Dictionary of Military and Associated Terms, Joint Chiefs of Staff Publication 1-02 (Washington, D.C.: Office of the Chairman of the Joint Chiefs of Staff, 1

December 1989), 243. *See also*, The Joint Chiefs of Staff, Unified Action Armed Forces, Joint Pub 0-2 (Washington, D.C.: Joint Chiefs of Staff, 24 February 1995), I-4; and U.S. Department of Defense, Functions of the Armed Forces and the Joint Chiefs of Staff, Department of Defense Directive 5100.1. (Washington, D.C.: U.S. Department of Defense, 21 September 1987) *reprinted in* 32 C.F.R. Part 368 (1987). The National Command Authority concept has been criticized as an abrogation of the President's constitutional responsibility as Commander in Chief. Author and former career Army officer, Harry G. Summers, Jr., presents this view below:

Harold Brown, President Carter's secretary of defense, once said with a sniff, presidents have better things to do than worry about the military and the mechanics of national defense. Those words seem to describe as well the attitudes of the Clinton White House. *The constitutional requirement that the president be commander in chief once again has been delegated to bureaucrats while President Clinton concentrates on what he sees as more pressing concerns of health-care reform and other domestic issues.* Lost is Gen. Douglas MacArthur's warning in 1932 that "the selection of national objectives and the determination of the general means and methods to be applied in obtaining them ... are decisions to be made by the head of state. ... The issues involved are so far-reaching in their effect and so vital in the life of the nation that coordinating ... Army and Navy efforts should not be delegated by the commander in chief to any subordinate authority. Any such attempt would not constitute delegation but rather abdication." During the Senate hearings over his relief from command during the Korean War for challenging President Truman's strategic direction, MacArthur was confronted with his remarks of two decades earlier. "As I look back, senator, upon my rather youthful days then," he said, "I am surprised and amazed how wise I was." But that wisdom did not endure. Despite President Johnson's boast that he personally would approve the bombing of every "outhouse" in Vietnam, the truth is that the direction of U.S. strategy was so ignored that 70 percent of the generals would complain they were unsure of U.S. military objectives. The direction of foreign and military policy was abdicated to what came to be known as the "national command authority," the euphemism for whoever it was, if anybody, who was making the decisions in Washington. Gen. William Westmoreland's request that the battlefield be isolated by extending the demilitarized zone across Laos into Thailand, for example, neither was approved nor disapproved. It merely disappeared into the labyrinth of the bureaucracy. The situation did not improve after Richard Nixon took office. There was no doubt, however, during the Persian Gulf War who was running the show. Instead of "national command authority," the strategic direction of the war was given personally by President Bush. But "national command authority" is once more in vogue. As was revealed in the aftermath of the Mogadishu, Somalia, tragedy, no one seems to be in charge. Like Westmoreland's request for a change in strategy, the request from the field for armored vehicles to protect the troops disappeared into the bureaucratic labyrinth. Clinton, no doubt truthfully, denied any knowledge that such a request had been made. But while he can delegate his authority as commander in chief to the bureaucracy, Clinton has learned that MacArthur was right. The American people will not allow him to abdicate his responsibility. (Emphasis added.)

Harry G. Summers Jr., The Air Force Times, 22 November 1993., *reprinted in* Congressional Record, vol. 139, H 10287, H 10293 (1993) (statement of Rep. Dornan).

⁶³ Colin L. Powell, My American Journey (New York: Random House, 1995), 580.

⁶⁴ Henry L. Trewhitt, McNamara, (New York: Harper and Row, 1971), 217. The author continues, "In broader terms, air strategists held that a heavy attack for maximum damage to North Vietnamese war-making capability would achieve American objectives faster, at acceptable risk. The issue was joined gently at first, but would eventually become one of the fundamental points of difference between the military and the Secretary of Defense." *Ibid.* While this excerpt illustrates the magnitude of the Secretary's command powers, this paper will not examine command relationships between the Secretary, military commanders, and the President during the Vietnam War.

⁶⁵ The cumulative reading of the US Constitution and implementing armed forces legislation holds, that aside from the President (and his successors to power in his absence), no Executive Branch official (uniformed or civilian) exceeds the authority of the Secretary of Defense in military matters.

⁶⁶ U.S. Constitution, Article I, section 8.

⁶⁷ *Ibid.*, art. II, section 1.

⁶⁸ *Ibid.*, art. II, section 2.

⁶⁹ Act of Aug. 7, 1789, Chap. VII, I Statute 49 (1789).

⁷⁰ In 1798, Congress created the Department of the Navy, again, run by a civilian Secretary. Both Secretaries, however, executed their duties pursuant to presidential direction and delegation. This period of time did, however, see Presidents who *directly* participated in their duties as Commander in Chief (*See generally*, James E. Hewes, Jr., From Root to McNamara: Army Organization and Administration, 1900 – 1963, (Washington, D.C.: Center of Military History, United States Army, 1975), 3. Madison, Jackson, Polk, and Lincoln often commanded personally or through the Secretary of War. *Ibid.*, 5. But more often, the civilian-military interface in the Army came through the "Commanding General" a billet invented by Secretary of War John C. Calhoun after the War of 1812. (*Ibid.*, 3) Notably the Commanding General billet had neither congressional approval or a definition of its duties pertaining to its relationship with the Secretary of War and the President (*Ibid.*, 4).

The army had two elements, the "line community" which consisted of various posts, and the "War Department's staff" in Washington. The War Department staff consisted of "bureaus" such as the Corps of Engineers and the Ordnance Department which combined both command and support functions to their respective officers in the field. Posts were grouped geographically into "departments" and "commanded" by the "Commanding General." (*Ibid.*) In truth, the Commanding General didn't command in law or fact. He was more or less a conduit for the President and the Secretary of War. The real power base, from the Army's perspective, were the bureau chiefs (*Ibid.*, 3). Unlike the Secretary of War, who had a retirement system, bureau chiefs typically remained in office for life or until resignation (*Ibid.*, 5). Understandably, their longevity caused them to gain increasing command and control power. The net effect was that the War Department was a "hydra-headed holding company" that had a fractured chain of command from the President to the field commanders. (*Ibid.*) The President, however, remained the coordinator between civilian-led land forces (the War Department) and naval forces (the Navy Department). It was an impossible task.

"Although Attorney General Cushing had issued an opinion in 1855 to the effect that 'the direction of the President is to be presumed' in all instructions and orders from the Secretaries of War and Generals of the Army," (John Norton Moore and Robert F. Turner, The Legal Structure of Defense Organization (1986), 12, *citing* Ops. Atty Gen. 453, 482 (1855)) the Spanish - American War demonstrated that the recurring dispute of "command authority" needed resolution.

Then Secretary of War Elihu Root successfully pushed for reform legislation. The act of February 14, 1903, creating for the Army a General Staff Corps and a Chief of Staff . . . [which] made clear that the Secretary of War had command authority *by delegation* from the President and that the Army Chief of Staff exercised 'supervision' pursuant to these instructions of the President passed to the Secretary of War (*Ibid.*) (Emphasis added.)

Even more significant, was the creation of a Joint Army-Navy Board as "the first attempt to use a regularly constituted agency to coordinate the actions of the Army and the Navy" AFSC Pub. 1, 2-3. Still, there was no singular Executive Branch official, except the President, that exercised joint civilian control over the armed forces.

World War I saw President Wilson and Secretary of War Newton D. Baker broadly delegate authority to conduct the war to military professionals (Hewes, 58. Hewes concludes that Wilson was the only President in US history not to play an active role as Commander in Chief during wartime. (*Ibid.*) The joint board, because of its inability to "initiate ideas or enforce decisions" had "little or no impact on the conduct of the first World War" AFSC Pub. 1, 2-7. The years leading up to World War II saw modest, if any, structural changes in the President's chain of command structure. For example, in 1932 the House considered a bill that would have permitted the President to establish a Department of National Defense and, as the President saw fit, subject to approval of Congress, transfer and consolidate functions of executive departments. Little resulted from the initiative. The establishment of a single defense department was rejected by the House, and the sweeping reorganization

recommendations made by President Hoover were eventually rejected by a lame-duck Congress. (AFSC Pub. 1 (1993 ed.), 2-3).

Predictably, the Joint Board of the Army and Navy also shunned the notion of singular, civilian-led consolidated "Department of National Defense" stating that the proposed system wouldn't be "more efficient or more economical than the present separate departmental organizations." (Ibid., 4-4) Sadly, the pre-World War II command and control structure operated from a basic assumption that the President and Secretary of War would again assume passive roles as warfighters. Franklin Delano Roosevelt did not, however, abrogate his role as Commander in Chief. (See also Eric Larabee, Commander in Chief, Franklin Delano Roosevelt, His Lieutenants and Their War (New York: Simon and Shuster 1987)).

During World War II, President Roosevelt created a "Chief of Staff to the President, an informal organization of the Joint Chiefs of Staff, and unified commands in several theaters of operation." (See Moore and Turner, 13.) Roosevelt often spoke directly through his Chief of Staff, General George Marshall, which resulted in friction between Marshall's office and Secretary of War, Henry L. Stinson. (Hewes, 60). The President approved the Marshall Reorganization Plan on 28 February 1942 with an effective date of 9 March 1942. "The President approved the plan with one significant change. He wanted it reworded to 'make it very clear that the Commander-in-Chief exercises this command function in relation to strategy, tactics, and operations directly through the Chief of Staff.'" (Ibid., 74) But soon, friction gave way to mutual respect and the two informally divided labor and responsibilities. (Ibid.)

⁷¹ The National Security Act of 1947, Pub. L. No. 253, 61 Stat. 496 (codified as amended in scattered sections of Titles 10 and 50 of United States Code [hereinafter National Security Act of 1947]). General George Marshall, in the years immediately following World War II, insisted that he couldn't have "run the war" without having had "radically reorganized the department to provide centralized, unified control through decentralized responsibility for administration. (Hewes, 29) Supporters such as General Dwight Eisenhower and President Harry Truman favored unification while others, such as the Navy Department, opposed it because they feared losing aviation assets to the proposed "Air Force" (heretofore known as the "U.S. Army Air Corps").

Secretary of War Robert P. Patterson and the Navy Department's Secretary James Forrestal eventually compromised, in that they agreed in principle to creating a "National Military Establishment" consisting of a Department of the Navy, Department of the Army, and a newly created Department of the Air Force. Before that, the Navy's position followed "The Eberstadt Report," which "advised against the establishment of a single defense department, recommended the creation of a new Air Department, and emphasized the need for effective coordination of foreign policies as well as of domestic and economic policies with military activities." (The Department of Defense, Documents on Establishment and Organization 1944 - 1978 (1978) citing Committee on Naval Affairs, 79th Cong., 2d Sess., Unification of the War and Navy Departments and Postwar Organization for National Security, (Comm. Print 1945).) This compromise "paved the way for 1947 Act." (Moore, 15.)

⁷² Initially called the National Military Establishment. National Security Act of 1947, section 201(a).

⁷³ Ibid. The name change to "Department of Defense" came two years later. Further, the Act also created the following:

- Joint Chiefs of Staff (Ibid., section 211). No Chairman "duties," however, were defined;
- The Central Intelligence Agency (Ibid., section 102);
- The Air Force and the billet of "Chief of Staff, United States Air Force" -- a position equal to Chief of Naval Operations and Chief of Staff of the Army (Ibid., section 208);
- The War Council (Ibid., section 210). Consisting of the Service Chiefs and Service Secretaries, its job was to "advise the Secretary of Defense on matters of broad policy relating to the armed forces";
- The National Security Counsel (Ibid., section 101). The early NSC was larger than today's membership of the President, Vice President, Secretary of State, and Secretary of Defense. The National Security Act of 1947's NSC consisted of the President, Secretary of State, Secretary of Defense, Secretary of the Army, Secretary of the Navy, Secretary of the Air Force, Chairman of the National Security Resources Board, and others "as the President may direct.";

- Renamed the Department of War to the Department of the Army (Ibid., section 205). The Secretary of War was also renamed the Secretary of the Army; and
- Defined the Marine Corps as a part of the Department of the Navy (Ibid., section 206(c). Section 206 was replete with references to naval and Marine Corps aviation. The debates leading up to the Act caused concern amongst the naval aviation community. "One reason for the Navy's conviction against a single department is the continuing efforts of the Army Air Forces to restrict and limit Naval Aviation. The Navy knows that these efforts, if successful, would seriously impair our seapower and jeopardize our national security. To accomplish its fundamental purpose, the Navy needs a certain number of land planes for naval reconnaissance, antisubmarine warfare, and protection of shipping. Experience indicates that such land planes, to be effective, must be manned by naval personnel trained in naval warfare. Lack of such aircraft under complete naval control as to design, procurement, operations, personnel, training, and administration, might be disastrous to our national security." (Secretary of War, Secretary of the Navy, ltr to the President of May 31, 1946, *reprinted in* 92 Cong. Rec. Part 6, 7424 - 7426 (1946).

⁷⁴ Ibid., section 201(a).

⁷⁵ Ibid., section 202(a). Eligibility also depended on the candidate not having served on active duty in the Regular Component of the armed forces within ten years of appointment to the position. The first Secretary of the Defense was former Secretary of the Navy, James Vincent Forrestal. Ironically, it was Forrestal's Department of the Navy that was least supportive of service unification under one executive department. Steven L. Reardon, History of the Secretary of Defense, The Formative Years 1947 – 1950, (Washington, D.C.: Office of the Secretary of Defense 1984), 30.

⁷⁶ Ibid., section 202(a)(1),(2).

⁷⁷ Ibid., section 202(a)(1),(2).

⁷⁸ Ibid., section 202(a).

⁷⁹ The 1949 Amendments effectuated the change. The National Security Act of 1947, Pub. L. No. 253, 61 Stat. 496 *as amended by* Pub. L. 216, 63 Stat. 578 (codified as amended in scattered sections of 10 U.S.C. and 50 U.S.C.). These were the amendments renaming the "National Military Establishment" to the "Department of Defense." Ibid., section 201(a).

⁸⁰ Ibid., at section 202(b). This amendment specifically *repealed* the four duties of the Secretary under the 1947 Act. Instead, the amended act broadly empowered him, subject only to the President and other provisions of the act, to "have direction, authority, and control over the Department of Defense." (The military departments were, before this, in the operational chain of command from the President to the operational commanders.) The idea of him providing "general" guidance and control was specifically repealed. Ibid.

⁸¹ Other consolidations of Secretarial power included:

- Elimination of the Service Secretaries as members of the National Security Council (Ibid., at section 101(a). The new membership included only the President, Vice President, Secretary of State, and Secretary of Defense);
- Prevention of the Service Secretaries to appeal "over the Secretary's head" to the President or Director of Budget. The amended act allowed the Service Secretaries and the Joint Chiefs to present matters to Congress, provided the Secretary was first informed. (Ibid., at section 202(c)(6).) Note that Service Secretaries (who were linked to their respective operational commanders) were now *legislatively prevented* access to the President.

- Establishment of a Chairman of the Joint Chiefs of Staff; noting that the Chairman could "not exercise military command over the Joint Chiefs of Staff or over any of the military services." (Ibid., at section 211(d).)

⁸² In 1952, outgoing Secretary of Defense Robert A. Lovett complained to President Truman "that the position of the Secretary of Defense in relationship to the President and the Joint Chiefs of Staff should be clarified." Although he interpreted the Act to mean that the Joint Chiefs fall subordinate to the Secretary, he claimed that "legal beavers" occasionally raised the question because of the Act's reference to the Joint Chief's "principal military advisor to the President" function. Letter from Robert Lovett, Secretary of Defense to Harry S. Truman, President of the United States (Nov. 18, 1952), *reprinted in The Department of Defense, Documents on Establishment and Organization 1944 -1978* (1978), 118. Lovett's letter also urged the President to exclusively engage the Joint Chiefs in planning functions -- and let the balance of military staff functions cede to the Office of the Secretary of Defense, through a joint military civilian staff. Ibid., at 121. Lovett noted that "overall civilian control is essential and . . . fundamental to our form of government. . . [y]et civilian judgement must be based on adequate military advice given by professional military men in an atmosphere as free as possible from service rivalries and service maneuvering." Ibid., at 119. The request was to no avail. However, after a change in administration, Secretary of Defense Charles E. Wilson appointed a committee to study the structure of the Department of Defense. Headed by Nelson A. Rockefeller and former General of the Army Omar Bradley, the committee's final report included a legal opinion that confirmed, among many other topics, the Secretary of Defense's pervasive authority. Letter from Nelson A. Rockefeller, Chairman Committee on Department of Defense Reorganization to Charles E. Wilson, Secretary of Defense (Apr. 11, 1953) *reprinted in The Department of Defense, Documents on Establishment and Organization 1944 - 1978* (1978) at 143.

In our opinion, the Secretary of Defense now has by statute full and complete authority, subject only to the President and certain specific restrictions subsequently herein listed, over the Department of Defense, all its agencies, subdivisions, and personnel. To make this statement perfectly plain, there are no separately administered preserves in the Department of Defense. The Secretaries of the military departments, the Joint Chiefs of Staff, all officers and agencies and all other personnel of the Department are "under" the Secretary of Defense. Congress has delegated to the Secretary of Defense not only all the authority and power normally given the head of an executive department, but Congress has, in addition, expressly given the Secretary of Defense *even greater power when it made the Secretary of Defense "the principal Assistant to the President* in all matters pertaining to the Department of Defense." (Emphasis added.) Ibid., at 144.

⁸³ In a letter to Congress, President Eisenhower championed the strength of true unified commands and urged the end of the old structure. "We must recognize that by law our military organization still reflects the traditional concepts of separate forces for land, sea, and air operations, despite a Congressional assertion in the same law favoring 'their integration into an efficient team of land, naval, and air forces' This system is clearly incompatible with unified commands whose missions and weapons systems go far beyond concepts and traditions of individual services." Pub. Papers, *Dwight D. Eisenhower: 1958*, 274-290.

⁸⁴ Department of Defense, Functions of the Armed Forces and the Joint Chiefs of Staff, Department of Defense Directive 5100.1 (Washington, D.C.: U.S. Department of Defense, 16 March 1954). This directive was a minor modification of the original "Key West Agreement" which was a Secretary of Defense memorandum of 21 April 1948. Consistent with the Department of Defense's solidification of the Secretary's authority, Section I, paragraph 1 stated that "No function in any part of the Department of Defense, or in any of its component agencies, shall be performed independent of the direction, authority, and control of the Secretary of Defense." (Emphasis added.) Paragraph 14 established the Secretary's authority to create unified commands, and also set forth the command lines. Further, the agreement clarified who had the authority to designate executive agents for the unified commands. Under the old arrangement, the joint chiefs chose the executive agent; the modification gave this function to the Secretary of Defense. Again, the idea was to preserve and promote the idea of civilian control of the military. Ibid.

⁸⁵ Ibid., para. 14.

⁸⁶ Ibid., para. 14(c). The modified Key West agreement was one of the byproducts of independent studies of the Department of Defense, such as that done by the Rockefeller Committee. The formal endproduct was "Reorganization Plan 6" which did away with certain agencies and functions, and also established the DoD General Counsel. The plan was prepared by the President and incorporated into the 1947 Act through legislative procedures found in the 1949 Amendments to The National Security Act of 1947. House and Senate approval was required. Reorganization Plan No. 6 of 1953, reprinted in Timothy W. Stanley, American Defense and National Security, (Washington, D.C.: Public Affairs Press 1956), 174.

⁸⁷ Tangentially, the Joint Chiefs of Staff, per their statutory role as "principal military advisers to the President" had the only uniformed service authority to advise the President on a military matter. But it was wholly discretionary, thus dependent on the leadership style of the Joint Chiefs of Staff and their Commander in Chief. The National Security Act of 1947, Pub. L. No. 253, 61 Stat. 496 as amended by Pub. L. 216, 63 Stat. 578, section 211 (b).

⁸⁸ Pub. Papers, *Dwight D. Eisenhower: 1958*, 274-290. Note that reform wouldn't truly come on this point until 1986. In the 1983 bombing of the Marine barracks in Beirut, there were eight levels of command between the ground commander and the President. Eisenhower's words were prophetic:

The number of headquarters between the Commander in Chief and the commander of each unified command must be kept at the very minimum. Every additional level courts delay, confusion of authority, and diffusion of responsibility. When military responsibility is unclear, civilian control is uncertain. Ibid.

⁸⁹ The National Security Act of 1947, Pub. L. No. 253, 61 Stat. 496 as amended by Pub. L. 216, 63 Stat. 578, as amended by Pub. L. 85-599, 72 Stat. 514 (codified as amended in scattered sections of Titles 10 and 50 United States Code).

⁹⁰ Ibid., section 202(j).

⁹¹ Ibid.

⁹² Ibid., section 202(j).

Such combatant commands are responsible to the President and the Secretary of Defense for such military missions as may be assigned to them by the Secretary of Defense, with the approval of the President. Forces assigned to such unified combatant commands . . . shall be under the *full operational command* of the commander of the unified command . . . (Emphasis added.) Ibid.

⁹³ Ibid., section 142(3).

⁹⁴ Ibid., section 142(3).

⁹⁵ Mark Perry, Four Stars (Boston: Houghton Mifflin, 1989), 106-110 .

⁹⁶ After Secretary of Defense McNamara directly contradicted the testimony of the Joint Chiefs (in Congressional testimony), the Joint Chiefs seriously considered resigning "en-masse." Ibid., 160 -165. McMaster, Derelection of Duty, (New York: Harper Collins, 1997) 233.

⁹⁷ "To this last duty, we [Congress] have given insufficient attention." S. Conf. Rep., Goldwater-Nichols Department of Defense Reorganization Act of 1986, 99th Cong. 2nd Sess (1986) reprinted in Congressional Record, vol. 132, S12651 (1986) (*remarks of Senator Goldwater*). Senator Goldwater also stated, "Gen. Shy Meyer, former

Chief of Staff of the Army, also deserves our thanks. He joined General Jones in criticizing the current system, and, thereby, reinforced the call for reform." Ibid. [hereinafter, remarks of Senator Goldwater].

⁹⁸ Goldwater - Nichols Department of Defense Reorganization Act of 1986, Pub. L. No. 99-433, 100 Stat. 992 (codified as amended in scattered sections of Title 10, United States Code) [hereinafter Goldwater - Nichols].

⁹⁹ See remarks of Senator Goldwater, *supra*.

¹⁰⁰ Goldwater - Nichols, 100 Stat. 992.

¹⁰¹ Goldwater - Nichols, 100 Stat. 992, 993. Other key points included: reducing bureaucracy in Washington by reducing the size of Service Headquarters' staffs; reducing the onerous crush of reports Congress required of the Department of Defense per year; creation of a "joint officer specialty" which allowed military officers to become specialists in joint operations and yet remain competitive with their Service's promotion system; and creation of a Vice Chairman of the Joint Chiefs of Staff. Ibid. Congress also intended to strengthen the authority and functions of combatant commanders and the Chairman of the Joint Chiefs of Staff.

The bill will increase the authority of the commanders in chief of the unified commands, those three- and four-star military officers who are in command of our forces in the field in peace and war. These are the individuals who look beyond the perspective of just one service and who must ensure that all elements of their command are ready to fight in a coordinated fashion. Under current circumstances, they are hampered by a web of bureaucratic constraints that require them to operate with essentially independent single service component commands that severely constrict their flexibility. Our bill gives these commanders in chief much greater authority and permits them to do such things as organize their commands as they see fit. This is decentralization as it should be -- less authority in the Washington bureaucracies and more responsibility in the field where the action is. This should help avoid such episodes as the tragic bombing of our marines in Beirut where there were eight levels of command bureaucracy between the marines on the ground and the command authorities in Washington. When there are that many levels of command, responsibility is diffused. Because everyone is in charge, no one is in charge. Our bill will permit the commanders in chief in the field to organize their commands to best suit the tactical and operational needs of their area of responsibility. For example, under this bill, there could have been only one layer of command between the marines in Beirut and the authority here in Washington. Instead, we had eight layers of command between the marines in Beirut and the Commander in Chief here in Washington.

Senate Conference Report, Goldwater-Nichols Department of Defense Reorganization Act of 1986, 99th Cong. 2nd Sess (1986) *reprinted in Congressional Record*, vol.132, S12651 (1986) (*remarks of Senator Nunn*) [hereinafter Senate Conference Report]. Senator Nunn's remarks were prophetic. In Somalia, once again, it was layers of command -- *this time civilian command*, that prevented the commander from having force protection equipment.

¹⁰² See generally, U.S. Department of Defense, Functions of the Armed Forces and the Joint Chiefs of Staff, Department of Defense Directive 5100.1, (Washington, D.C.: U.S. Department of Defense, 21 September 1987) *reprinted in* 32 C.F.R. Part 368 (1987). A better description of these duties is found in Joint Pub. 0-2, II-5 -- II-11 *supra*.

¹⁰³ Senate Conference Report, *remarks of Senator Nunn, supra*.

Under the old law, the Joint Chiefs of Staff was a committee and its advice reflected the weaknesses of a committee product -- that is, it was watered down and muddled so that all of the Joint Chiefs could agree. Our bill makes the Chairman the principal military adviser; he can give advice in his own right. It puts him in charge of the Joint Staff. But it also ensures that individual service chiefs will have the right to provide their views or opinions, even if in dissent, to the President, the National Security Council, and the Secretary of Defense. This new procedure should

enhance not only the quality and timeliness of military advice but in my judgment it will enhance the role of the military since their advice is more likely to be listened to and followed.

Ibid., *See also*, Goldwater - Nichols, 100 Stat. 993, 1005.

¹⁰⁴ Goldwater - Nichols, 100 Stat. 993, 1005.

¹⁰⁵ Goldwater-Nichols, *supra*, 10 U.S. Code, sec. 151(b) (as principal military advisor); 10 U.S. Code, sec. 163(b)(2) (as spokesman for the combatant commanders to the Secretary of Defense).

¹⁰⁶ Communication flow is as follows:

[T]he President may –

- (1) direct that communications between the President or the Secretary of Defense and commanders of the unified and specified combatant commands be transmitted through the Chairman of the Joint Chiefs of Staff; and
- (2) assign duties to the Chairman to assist the President and the Secretary of Defense in their command-function.

Goldwater-Nichols, *supra*, 10 U.S. Code, sec. 163(a). The statutory communication structure regarding operational requirements for combatant commanders was almost prophetic for Somalia.

[T]he Chairman ...serves as the spokesman for the commanders of the combatant commands, especially on the operational requirements of their commands. In performing such function, the Chairman shall –

....

(C) advise and make recommendations *to the Secretary of Defense* with respect to the requirements of the combatant commands, individually and collectively.... (Emphasis added.)

Goldwater-Nichols, *supra*, 10 U.S. Code, sec. 163(b)(2). Note that there is *no* requirement to notify the President. The recommendation simply goes to the Secretary. Presumably, he will notify the President if, in matters he deems appropriate. Uniformed advice, therefore, stops at the secretarial level. For the other Joint Chiefs, the rule was clear: they may give collective or individual opinions or advice to the President, the Secretary of Defense, and the National Security Council, but only when requested by the President, Secretary of Defense, or National Security Council. Goldwater - Nichols, *supra*, 100 Stat. 993, 1005.

¹⁰⁷ Goldwater - Nichols, 100 Stat. 993, 1013.

¹⁰⁸ Ibid., 1005.

¹⁰⁹ Goldwater – Nichols, 10 U.S.C. sec. 164(b)(1).

¹¹⁰ Goldwater - Nichols, 100 Stat. 993, 1014.

¹¹¹ Ibid.

¹¹² President's News Conference With Prime Minister Ciller of Turkey, Weekly Compilation of Presidential Documents, Volume 29, 2076 15 October 1993 (responding to a question from Brit Hume, ABC News, about consequences to the military chain of command after the Somalia firefight).

¹¹³ Additionally, one can only speculate whether it was poor intelligence, tactics used, the ferocity of the foe, luck, or the lack of proper equipment, that either individually or collectively contributed to the maiming of Task Force Ranger.

¹¹⁴ General Garrison, commander of Task Force Ranger, submitted a handwritten letter to the President whereby "he accepts responsibility for the failed mission" and said "a deployment of armored vehicles would not have changed the outcome." John M. Broder, "Officer Takes Blame for U.S. Setback," L.A. Times, 29 October 1993. But the timing of his letter, which came immediately after he met with Secretary Aspin, was criticized by some in Congress as the Secretary's attempt to make Garrison the "fall man." See Capital Hill Hearing, News Conference, *reprinted in Federal News Service*, 28 October 1993 (statement of Rep. Bill Archer). Also, in testimony before the Senate Armed Services Committee, the General concedes, in testimony below, that armor *would* have made a difference.

SEN. COHEN: Let's come back to this issue of the question of the use of Bradleys or M-1s. And I must tell you, I am confused by the responses that I have heard thus far. You talk about the power and capability, fire power capability of the M-1 tank, by way of example, or let's say the Bradley in this particular case. High -- greater fire power capability -- what, 25mm cannons on the Bradley, greater armor, speed, all of which I assume, from a military point of view, is designed to give greater protection. Right? For your forces.

GEN. GARRISON: That's part of it, yes, sir. Greater protection and it'll give it greater shock power and effectiveness on the battlefield against other combat systems.

SEN. COHEN: Now, as I understand it, when that attack was first carried out and our forces repelled down and they were on the ground, that when the helicopter first went down, those forces that were on the ground that tried to get to the helicopter came under attack. Is that not correct?

GEN. GARRISON: That is correct.

SEN. COHEN: And at that time, the best we had available were some five-ton trucks that had been heavily sandbagged?

GEN. GARRISON: And also some armored HUMVEEs.

SEN. COHEN: Right, but they were unable to punch through to get to that crash site?

GEN. GARRISON: Not that they were unable to punch through. They had the detainees on board those vehicles. Also they suffered some casualties in their movement, so the decision was made to bring them back to the airfield.

SEN. COHEN: *Is it your judgment now, as opposed to under the pressure of conflict at that time, that the presence of Bradley would not have saved lives under those circumstances? There were lives lost on the ground by our forces at that time, were there not, trying to get to the crash site?*

GEN. GARRISON: *There is no question that to use Bradleys, as opposed to using a light-skin vehicle, would always be preferential.*

SEN. COHEN: *And in your judgment, would the probability, if not talking about possibility -- it's possible we may have saved more -- is it not more probable you save more lives with greater fire power, speed and protection?*

GEN. GARRISON: *I am absolutely certain that that would have been the case*

SEN. COHEN: Gentlemen, I thank you. Mr. Chairman, my time is up.

Senate Hearings, statement of General Garrison, *supra*. Ibid. (Emphasis added.)

LTG Montgomery, the QRF commander, testified "I think we would have had less casualties, that's my belief" (if they had armor to protect them from rocket propelled grenades and small arms fire). LTG Montgomery reportedly had two men killed and 14 wounded who were rushing to the embattled Rangers. Barton Gellman, "Somalia Hearing Examines Rejected Request for Armor," Washington Post, 13 May 1994, A40.

In the House of Representatives, Rep. Dornan sent a letter to colleagues that shared his interview with General Garrison in Somalia.

During my trip to Somalia, one commander specifically brought up his request for armor. The commander of the forces who conducted the October 3/4 operation made no mention to me about not needing armor rescue or a letter to the President (all we know for sure at this point is that only two people have seen the letter). I believe that in writing the letter he was being a "good soldier" and trying to take all the blame upon himself. This commander was the last person I saw in Somalia and he said, "Congressman, that was a good mission. We completed our mission and then got into a hell of a fire fight on the way out." Agreed. But it's this Quick Reaction Force/rescue aspects that needed armor to break through roadblocks and blast through ambushes.

"Let's Get the Real Facts About What Happened in Somalia," Congressional Record, vol.139, H 10287 (1993) (ltr. from Rep. Dornan).

¹¹⁵ "Chain of command" is "the succession of commanding officers, from superior to subordinate through which command is exercised." Joint Pub 1-02, 63.

¹¹⁶ Goldwater - Nichols, 100 Stat. 993, 1013. "Unless otherwise directed by the President, the chain of command to a unified or specified command runs from the President to the Secretary of Defense; and from the Secretary of Defense to the Combatant Command." Ibid.

¹¹⁷ See JCS Pub 0-2 *supra*, at 1-1, 3-22. "Communications from the President or the Secretary of Defense to the Commanders of the Unified and Specified Combatant Commands, shall be transmitted through the Chairman, JCS. Communications from the Commanders of the Unified and Specified Combatant Commands to the President and/or the Secretary of Defense shall be transmitted through the Chairman, JCS." U.S. Department of Defense, Functions of the Armed Forces and the Joint Chiefs of Staff, Department of Defense Directive 5100.1. (Washington, D.C.: U.S. Department of Defense, 21 September 1987) *reprinted in* 32 C.F.R. Part 368 (1987). (Emphasis added.)

¹¹⁸ Subject to the authority, direction, and control of the Secretary of Defense, the Chairman acts as the spokesman for Commanders of the Unified and Specified Commands, especially on the operational requirements of their commands and shall be responsible for overseeing the activities of the combatant commands. U.S. Department of Defense, Functions of the Armed Forces and the Joint Chiefs of Staff, Department of Defense Directive 5100.1 (Washington, D.C.: U.S. Department of Defense, 21 September 1987) *reprinted in* 32 C.F.R. Part 368.2(b)(3)(ii)(1987), implementing Goldwater - Nichols, 100 Stat. 993, 1013.

¹¹⁹ Gellman, *supra*, note 1.

It's just not going to happen," Aspin replied, according to two people who heard Powell's account of the conversation. Officials familiar with both men's recollections said the secretary told Powell that in terms of overall strategy in Somalia "the trend is all going the other way" and that Congress would be "all over" the administration if it raised the visibility of this presence there. Ibid.

Reportedly, the Chairman *again* spoke to the combatant commander and *again* revisited the Secretary with the request. *Ibid.*, *See also*, Powell, 586.

¹²⁰ Gellman, *supra*, note 1, wherein he explains the "Joint Chiefs" controversy below.

Later, in explaining his decision to refuse the armor, Aspin said on ABC's "This Week With David Brinkley" that the request was "never put in terms of protecting troops; it was put in terms of [accomplishing] the mission of delivering humanitarian aid."

That was not correct. Montgomery's message, a copy of which Powell handed Aspin on Sept. 23, had this header: "Subject: U.S. Force Protection." In the body of the message Montgomery said the "primary mission" of the armor "would be to protect U.S. forces."

In particular, Montgomery wrote, he would use the armor to "deter or defeat militia/bandit attacks on U.S. forces" and to "provide a critical roadblock clearing capability for our vulnerable thin-skinned vehicles." It was roadblock ambushes against HUMVEEs and five-ton trucks that prevented rapid reinforcement of the pinned-down Ranger force Oct. 3.

"I am increasingly concerned by the timid behavior of the [UN] coalition with which the security of our force rests," Montgomery said at the close of his message to Hoar. "We must ensure our own security.... I believe that U.S. forces are at risk without it."

"Concur that we must do a better job at protecting our local U.S. logistical traffic, the bypass road to the airfield and key installations, and to have more effective roadblock clearing capability," Hoar wrote. But he added there was a "political downside" to the proposal. Sending armor would expand the "U.S. footprint in Somalia," elevate "Aideed's stature" and increase "collateral damage in Somalia due to the increased firepower."

Powell, officials said, told Aspin he agreed with Hoar's request.

....

Powell, days from retirement, spoke to Hoar and then reiterated the request at least once more. People who have heard his account said he expressed no ambivalence about his endorsement. Other officers, and senior civilians, said it is hard to imagine that Aspin would have resisted if Powell had told him firmly that lives were at stake.

On Oct. 6, when the first reports surfaced that Aspin had refused to send armor, Clinton "picked up the phone and called Les to find out what the hell was going on," according to a senior administration official. Two days later Clinton said Aspin told him there had been "no consensus among the Joint Chiefs" to send the armor.

In fact, neither Aspin nor Powell consulted the chiefs. Administration officials speculated that Clinton misunderstood Aspin's reference to the mixed signals he thought he was getting from Hoar. Reluctant to contradict the president, they never corrected him. *Ibid.*

See also, Cushman, John H. "The Somalia Mission: How Powerful US Forces Will Work," The New York Times, 8 October 1993, A14.

¹²¹ White House Press Briefing on Somalia (CNN television broadcast, Transcript # 233 - 10, 7 October 1993).

¹²² Gellman, *supra*, endnote 120.

¹²³ As a practical matter, communicating with the President on National Security matters would, depending on the President's leadership style, be with (or through) his National Security Advisor.

¹²⁴ Powell, 580. He also describes Aspin as having a "disjointed" management style (578); "looked out of place" (*Ibid.*); projecting an image "not likely to inspire confidence in our troops or allies" (579); "immune to efficient organization" (566); and "capable of policy by one-liners and occasional cheap shots" (*Ibid.*).

¹²⁵ *Ibid.*, 586.

¹²⁶ See generally, Bob Woodward, The Commanders (New York: Simon & Schuster, 1991); Charles Tiefer, The Semi-Sovereign Presidency (Boulder, CO: Westview Press, 1994); and Powell, 415-569.

¹²⁷ Barry, 22.

¹²⁸ 33 members of Congress called for Secretary Aspin's resignation shortly after the incident. See Capital Hill Hearing, News Conference, *reprinted in* Federal News Service, October 28, 1993 (statement of Congressman Bill Archer). See generally, John Barry with Eleanor Clift, Bob Cohn and Douglas Waller, "The Collapse of Les Aspin," Newsweek, December 1993, 22.

¹²⁹ "The commander of a combatant command *is responsible to the President* and to the Secretary of Defense *for the performance of missions assigned to that command by the President or by the Secretary with the approval of the President.*" U.S. Code, vol. 10, sec.164 (1994). (Emphasis added.)

¹³⁰ U. S. Department of the Navy, U.S. Navy Regulations, 1990 (Washington, D.C.: U.S. Department of the Navy, 1990), article 1151.1. "The right of any person in the naval service to communicate with the commanding officer . . . is not to be denied or restricted." *Ibid.*

¹³¹ Any member of the armed forces who believes himself wronged by his commanding officer, and who, upon due application to that commanding officer, is refused redress, may complain to any superior commissioned officer, who shall forward the complaint to the officer exercising general court-martial jurisdiction over the officer against whom it is made. The officer exercising general court-martial jurisdiction shall examine into the complaint and take proper measures for redressing the wrong complained of; and he shall, as soon as possible, send to the Secretary concerned a true statement of that complaint, with the proceedings had thereon. U.S. Code, vol. 10, sec. 938 (1988) [Uniform Code of Military Justice, article 138 (1988)].

¹³² David McCullough, Truman (New York, NY: Simon and Schuster 1992), 497.

¹³³ Goldwater - Nichols, 100 Stat. 993, 1013.

¹³⁴ DoD would implement legislative amendment or executive guidance as to executive level communications within the chain of command through a series of implementing regulations. Most probably into Department of Defense Directive 5100.1, Functions of the Department of Defense and its Major Components *supra* and JCS Pub 0-2, Unified Action Armed Forces, *supra*. A sample executive order might be as follows:

EXECUTIVE ORDER XXXXXX

By virtue of the authority vested in me as President by the Constitution of the by Title 10 of the United States, and in order to prescribe procedures for unified combatant commanders to discuss operational matters with the Commander in Chief, do hereby order the following:

Unified combatant commanders should follow the chain of command procedures as stated in Title 10 and implementing regulations. The chain of command will continue to flow from the President to the Secretary of Defense and then from the Secretary of Defense to the unified and specified combatant commanders.

The Chairman of the Joint Chief of Staff will continue his function as facilitator of communications between the unified combatant commanders and the Secretary of Defense and the unified combatant commanders and the President.

In cases where the unified combatant commander disagrees with an order given him by the Secretary of Defense, and it's not clear that the order originated with the President, the unified combatant commander may hold that order in abeyance, and preferably within 24 hours, clarify that order directly with the President. This procedure does not apply to orders that originated with the President.

In cases where a combatant commander makes a request of the Secretary of Defense, and the Secretary denies that request independently (without the President's explicit approval) that combatant commander may appeal that denial to the President, preferably within 24 hours of the denial.

In both instances described above, the Chairman of the Joint Chiefs of Staff will serve as spokesman for the combatant commander. The Secretary of Defense should either physically or electronically be accessible for advisory purposes.

THE WHITE HOUSE

¹³⁵ Powell, 588.

¹³⁶ The constitutionally based "Rule of Law" pervades every aspect of US citizenry – to include criminal arrests, privacy, property rights, and overall form of government. We maintain constitutional legitimacy of these structures and processes through a continual process of testing and measurement – whether by debate, legislation, or through the courts. With the Constitution as touchstone, analysis of strategic command and control systems should be no exception. With that as its basis, Congress designed our forces for the primary purpose of "fighting and winning wars," a constitutionally proven concept for even Supreme Court decisions regarding the military. "We have repeatedly held that "the military is, by necessity, a specialized society separate from civilian society." Goldman v. Weinberger, 475 U.S. 503 (1986), *citing* Parker v. Levy, 417 U.S. 733, 743 (1974).

BIBLIOGRAPHY

A. BOOKS

- Allard, Kenneth. Somalia Operations: Lessons Learned. Washington, D.C.: National Defense University Press 1995.
- _____. Command, Control, and the Common Defense. Washington, D.C.: Yale University Press, 1996.
- Bolger, Daniel P. Savage Peace: Americans at War in the 1990s. Novato, California: Presidio Press, 1995.
- Clarke, Walter and Jeffrey Herbst, eds. Learning From Somalia. Boulder: Colorado Westview Press, 1997.
- Condit, Doris M., Office of the Secretary of Defense. History of the Secretary of Defense, The Test of War, 1950 -1953. Washington, D.C.: 1988.
- DeLong, Kent and Steven Tuckey. Mogadishu! Heroism and Tragedy. Westport, Connecticut: Praeger, 1994.
- The Department of Defense. Documents on Establishment and Organization 1944 - 1978. Washington, D.C.: 1978.
- Hewes, James E. Jr., Center of Military History, United States Army. From Root to McNamara: Army Organization and Administration, 1900 - 1963. Washington, D.C.: 1975.
- Kugler, Richard L. U.S. Military Strategy and Force Posture for the 21st Century. Santa Monica, CA: Rand, 1994.
- Korb, Lawrence J. The Fall and Rise of the Pentagon. Westport, CT: Greenwood Press, 1979.
- Larrabee, Eric. Commander in Chief, Franklin Delano Roosevelt, His Lieutenants, and Their War. New York: Simon and Shuster, 1987.
- McCullough, David. Truman. New York: Simon and Schuster, 1992.
- McMaster, H.R. Dereliction of Duty. New York: Harper Collins, 1997.
- Moore, John N. and Robert F. Turner, The Legal Structure of Defense Organization. Washington, D.C.: 1986.

Nuestadt, Richard E. Presidential Power and the Modern Presidents: the Politics of Leadership from Roosevelt to Reagan. New York: Free Press, 1990.

Perry, Mark. Four Stars. Boston: Houghton Mifflin, 1989.

Powell, Colin L. An American Journey. New York: Random House, 1995.

Raines, Edgar F. Jr. and David R. Campbell. The Army and the Joint Chiefs of Staff: Evolution of Army Ideas on the Command, Control, and Coordination of the U.S. Armed Forces 1942 - 1985. Washington, D.C.: 1986.

Reardon, Steven L. History of the Secretary of Defense, The Formative Years 1947 - 1950. Washington, D.C.: Office of the Secretary of Defense, 1984.

Siegel, Adam B. Eastern Exit: The Noncombatant Evacuation Operation (NEO) From Mogadishu, Somalia in January 1991. Washington, D.C.: Center for Naval Analysis, 1992.

Sharp, Ulysses S. Strategy for Defeat. San Rafael, CA: Presidio Press, 1978.

Snyder, Frank M. Command and Control. Washington, D.C.: National Defense University Press, 1993.

Stanley, Timothy W. American Defense and National Security. Washington, D.C.: Public Affairs Press, 1956.

Trewhitt, Henry L. McNamara. New York: Harper and Row, 1971.

Webb, Willard J. and Ronald L. Cole. The Chairmen of the Joint Chiefs of Staff. Washington, D.C.: Historical Division, Joint Chiefs of Staff, 1989.

B. PERIODICALS

Barry, John; Cliff, Eleanor; Cohn, Bob; and Waller, Douglas.
"The Collapse of Les Aspin," Newsweek, December 1993, 22.

Church, George J. "Anatomy of a Disaster," Time, 18 October 1993, 40.

Lief, Louise, Aster, Bruce B., and Kiley, Sam. "What Went Wrong in Somalia?," U.S. News & World Report, 18 October 1993, 33.

Powell, Stewart M. "American Troops -- American Command," Air Force Magazine, January, 1994.

Weber, Vin. "A Crisis of Competence" National Review. 15 November 1993, 27.

C. NEWSPAPER ARTICLES.

Bowden, Mark. "Blackhawk Down: An American War Story," Philadelphia Inquirer, 29 part series from 16 November, 1997 to 14 December, 1997.

Broder, John M. "Officer Takes Blame for U.S. Setback," L.A. Times, 29 October 1993, 10.

Cushman Jr., John H. "The Somalia Mission: How Powerful US Forces Will Work," The New York Times, 8 October 1993, A14.

Gellman, Barton. "The Words Behind a Deadly Decision," The Washington Post, 6 October 1993, A1.

_____. "Somalia Hearing Examines Rejected Request for Armor," The Washington Post, 13 May 1994, A40.

Ricks, Thomas E. David Rogers. "Plea Last Month for Armor in Somalia Was Ignored in the United States, Army Aides Say," The Wall Street Journal, 6 October 1993, A3.

Summers, Harry G. Jr. The Air Force Times, 22 November 1993.

D. LEGISLATION.

U.S. Constitution, articles I and II.

Goldwater - Nichols Department of Defense Reorganization Act of 1986, Pub. L. No. 99-433, 100 Stat. 992 (codified as amended in scattered sections of 10 U.S.C.).

The National Security Act of 1947, Pub. L. No. 253, 61 Stat. 496 (codified as amended in scattered sections of 10 U.S.C. and 50 U.S.C.).

The National Security Act of 1947, Pub. L. No. 253, 61 Stat. 496
as amended by Pub. L. 216, 63 Stat. 578 (codified as amended
in scattered sections of 10 U.S.C. and 50 U.S.C.).

The National Security Act of 1947, Pub. L. No. 253, 61 Stat. 496
as amended by Pub. L. 216, 63 Stat. 578, as amended by Pub.
L. 85-599, 72 Stat. 514 (codified as amended in scattered
sections of 10 U.S.C. and 50 U.S.C.).

Title 10, United States Code, section 164 (1994).

E. REGULATIONS AND ASSORTED GOVERNMENT DOCUMENTS.

Letter from Nelson A. Rockefeller, Chairman Committee on
Department of Defense Reorganization to Charles E. Wilson,
Secretary of Defense (Apr. 11, 1953) reprinted in The
Department of Defense, Documents on Establishment and
Organization 1944 - 1978 (1978).

Letter from Robert Lovett, Secretary of Defense to Harry S.
Truman, President of the United States (Nov. 18, 1952),
reprinted in The Department of Defense, Documents on
Establishment and Organization 1944 -1978 (1978) at 118.

U.S. Armed Forces Staff College, The Joint Staff Officer's Guide
1993. Armed Forces Staff College Publication 1. Norfolk,
VA: Armed Forces Staff College 1993.

U.S. Armed Forces Staff College, The Joint Staff Officer's Guide
1997. Armed Forces Staff College Publication 1. Norfolk,
VA: Armed Forces Staff College 1997.

U.S. Department of Defense, Functions of the Armed Forces and
the Joint Chiefs of Staff, Department of Defense Directive
5100.1. Washington, D.C.: U.S. Department of Defense, 16
March 1954.

U.S. Department of Defense, Functions of the Armed Forces and
the Joint Chiefs of Staff, Department of Defense Directive
5100.1. Washington, D.C.: U.S. Department of Defense, 21
September 1987.

U.S. General Accounting Office, Defense Reorganization, Progress
and Concerns at JCS and Combatant Commands. Washington,
D.C.: U.S. General Accounting Office, March 1989.

U.S. Joint Chiefs of Staff, Unified Action Armed Forces (UNAAF), Joint Pub 0-2. Washington, D.C.: Joint Chiefs of Staff, 24 February 1995.

U.S. Office of the Chairman of the Joint Chiefs of Staff, Department of Defense Dictionary of Military and Associated Terms, Joint Chiefs of Staff Publication 1-02. Washington, D.C.: Office of the Chairman of the Joint Chiefs of Staff, 23 March 1994.

U.S. Secretary of War, U.S. Secretary of the Navy, ltr to the President of 31 May 1946, reprinted in 92 Cong. Rec. Part 6, 7424 - 7426 (1946).

F. PRESIDENTIAL PAPERS AND WHITE HOUSE REPORTS.

Public Papers, Dwight D. Eisenhower: 1958, 274-290.

The White House, National Security Strategy of the United States (1994). Washington, D.C.: The White House, 1994.

The White House. Report to the Congress on US Policy in Somalia. Washington, D.C.: The White House, 13 October 1993.

The White House. President's Letter to Congressional Leaders on Somalia. 29 Weekly Comp. Pres. Doc. 1216, 1 July 1993.

The White House. President's News Conference With Prime Minister Ciller of Turkey, 29 Weekly Comp. Pres. Doc. 2076, 15 October 1993.

G. CASES.

Goldman v. Weinberger, 475 U.S. 503 (1986).

Parker v. Levy, 417 U.S. 733, 743 (1974).

H. TELEVISED REPORTS.

Larry King Live 9:00 pm ET (CNN television broadcast, statement of Chief Warrant Officer Michael Durant, Transcript # 1004), 29 December 1993.

White House Press Briefing on Somalia (CNN television broadcast, Transcript # 233 - 10), 7 October 1993.

I. CONGRESSIONAL HEARINGS, REPORTS, AND SPECIAL ORDERS.

U.S. Congress. House. Call for Resignation of Defense Secretary Les Aspin, statement of Rep. Archer (R-Texas), Federal News Service, 28 October 1993.

U.S. Congress. House. Let's Get the Real Facts About What Happened in Somalia, 139 Cong. Rec. H 10287 (1993) (ltr. from Rep. Dornan).

U.S. Congress. House. United States Policy in Somalia, 139 Cong. Rec. H 10287 (1993) (statement of Rep. Dornan).

U.S. Congress. Senate. S. Conf. Rep., Goldwater-Nichols Department of Defense Reorganization Act of 1986, 99th Cong. 2d sess., 1986, reprinted in 132 Cong. Rec. S12651 (1986) (remarks of Senator Goldwater).

U.S. Congress. Senate. Senate Armed Services Committee. Hearings on U.S. Military Operations in Somalia, Capitol Hill Hearing with Defense Department Personnel, 103rd Cong., 2d sess. 1994 (statement of Senator Nunn (D)Ga.) reprinted in Federal News Service, 12 May 1994.

U.S. Congress. Senate. The Request for Armor for U.S. Forces in Somalia, 139 Cong. Rec. S 15198 (1993) (statement of Sen. D'Amato).

U.S. Congress. Senate. US Military Operations in Somalia, Hearings Before the Senate Armed Services Committee, 103rd Cong., 2d sess., 1994 (statement of Larry E. Joyce, veteran, and father of the late US Army Ranger, Casey Joyce, US Army) reprinted in Federal News Service, 12 May 1994.

J. UNITED NATIONS.

U.N. Charter, Chapters VI, VII.

U.N. Charter, art. 33 (1).

S.C. Res. 751, SCOR, 3101st mtg., U.N. Doc. S/RES/751 (1992).

S.C. Res. 775, SCOR, 3110th mtg., U.N. Doc. S/RES/775 (1992).

S.C. Res. 794, SCOR, 3145th mtg., U.N. Doc. S/RES/794 (1992).

S.C. Res. 814, SCOR, 3188th mtg., U.N. Doc. S/RES/814 (1993).

S.C. Res. 837, SCOR, 3229th mtg., U.N. Doc. S/RES/837 (1993).