



MEMORANDUM

March 2, 2017

Subject: Precedent for the Service of Active Duty Three-Star Generals and Flag Officers as the Assistant to the President for National Security Affairs

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This memorandum was prepared to enable distribution to more than one congressional office.

On February 20, 2017, the Trump Administration announced the appointment of U.S. Army Lieutenant General Herbert Raymond “H.R.” McMaster, Jr. to serve as the Assistant to the President for National Security Affairs.¹ The Trump Administration further indicated that Lieutenant General McMaster would remain on active duty status following his assumption of the duties of the Assistant to the President for National Security Affairs—a position that is also frequently referred to by the title of National Security Advisor.

U.S. Presidents have acted in three previous instances to designate three-star active duty U.S. military flag and general officers as the National Security Advisor: U.S. Air Force Lieutenant General Brent Scowcroft in 1975; U.S. Navy Vice Admiral John M. Poindexter in 1985; and U.S. Army Lieutenant General Colin L. Powell in 1987. While Scowcroft retired from active duty military service shortly after his designation as National Security Advisor by President Gerald Ford, Poindexter and Powell remained in their grades as three-star military officers while serving as the National Security Advisor, choices which mandated the involvement of the U.S. Senate.

This memorandum proceeds in the following manner. It first explains the National Security Council, the policymaking processes it oversees, and the role of the National Security Advisor within the Executive Branch. It then explores these prior precedents of active duty three-star generals and flag officers serving as the Assistant to the President for National Security Affairs, and includes discussions of related statutory provisions.

If you have any further questions, please do not hesitate to contact us at the phone extensions listed above.

¹ The White House, Office of the Press Secretary, “President Donald J. Trump Names Lieutenant General H.R. McMaster as Assistant to the President for National Security Affairs,” press release, February 20, 2017, <https://www.whitehouse.gov/the-press-office/2017/02/20/president-donald-j-trump-names-lt-general-hr-mcmaster-assistant-president>.

What is the National Security Council?

Since its inception in 1947, the National Security Council (NSC), and the institutions that support it, has evolved from a statutorily-mandated meeting of cabinet-level officials into a complex system of coordination, adjudication, and in some instances formulation (as in the case of Dr. Kissinger's tenure as National Security Advisor) of policies among relevant departments and agencies. As a result, when individuals refer to the "NSC," they variously refer to the decision-making body created in statute in the 1947 National Security Act; the staff that supports that decision-making body; or the processes used by the White House to discuss and adjudicate decisions across different agencies of the executive branch.

- **The National Security Council** is the President's statutory advisory body on matters related to national and international security. Pursuant to 50 U.S.C. §3021, the NSC's statutory members are the President, Vice President, Secretary of State, Secretary of Defense, and Secretary of Energy. Other senior officials, including the National Security Advisor, participate in NSC deliberations at the President's request. The Chairman of the Joint Chiefs of Staff and the Director of National Intelligence are the NSC's statutory advisors.² The National Security Council is chaired by the President.
- **The National Security Council Staff.** The NSC's activities are coordinated and directed by the Presidentially-appointed National Security Advisor. They are supported by a National Security Staff (NSS, or NSC staff) comprising permanent employees of the Executive Office of the President and detailees from other government agencies serving temporary assignments. It is organized into offices that focus on a variety of long-term strategic issues and ad hoc working groups that address emerging topics. Each President configures the NSC to address risks to U.S. global security interests according to the Administration's established policy priorities. During the Obama Administration, the Homeland Security Committee and National Security Council staffs were combined into an organization called the National Security Staff. The size of the NSC staff and ratio of political appointees to detailees has varied with each administration. In P.L. 114-328, the National Defense Authorization Act for Fiscal Year 2017, Congress limited the number of policy-focused individuals serving on the NSC staff to 200 persons.
- **Decision-making committees.** Coordinating and managing U.S. national security affairs requires routine coordination and discussion among relevant departments and agencies. Most administrations have therefore set up a hierarchical system of committees designed to discuss, and when appropriate decide, national security matters. These committees meet as frequently as the White House deems necessary. The design and composition of the committee structure is the prerogative of the President, but the approach has often included some variant of the following:
 - **The Principals Committee (PC)** is a level below the NSC, convened by the National Security Advisor. The PC does not need to include all statutory NSC members, but generally includes the heads of departments or agencies involved with the subject matter being discussed at a given meeting.
 - **The Deputies Committee (DC)** is convened by the Deputy National Security Advisor, and generally includes the deputy heads of departments (i.e., the Deputy Secretary of Defense or Deputy Secretary of State) involved with the subject matter being discussed at a given meeting.

² This "statutory advisor" designation exists in order to help prevent the politicization of the military and intelligence inputs into the national security decision making process.

- **Policy Coordination Committees (PCC)** are established by the Deputies Committee and are responsible for day-to-day management of national security matters on a given region or topic at the Assistant Secretary level from relevant agencies. These are chaired by members of the National Security Staff whose subject matter portfolios are relevant to the issue at hand. Different administrations have used various titles for these committees; under President Obama, this forum was called the Interagency Policy Committee.

Overall, the NSC and its supporting processes and institutions are purposefully designed to be flexible to afford the President maximum latitude to create a security advisory body that suits his unique decision-making style. Apart from appropriating its annual budget, Congress has little oversight over the Executive Office of the President, and the National Security Council system in particular, due to the fact that most national security positions within the Executive Office of the President (as opposed to senior level-positions of Departments and Agencies) are not currently subject to the advice and consent of the Senate.³ Some observers over the years have argued that the position of National Security Advisor should be subject to Senate confirmation and available to testify before congressional committees as are officials from other Government departments and agencies. Others argue that a President is entitled to confidential advice from his immediate staff.

Role of the National Security Advisor

In part reflecting the fact the NSC and its associated staffs and processes reorganize to meet the decision-making styles of each President, the actual role the National Security Advisor plays within Executive Branch policy deliberations is largely a function of Presidential preferences. Still, over time the National Security Advisor position has become increasingly institutionalized and the exercise of its functions has remained an integral part of the conduct of national security policy in all recent administrations. Indeed, the role of the National Security Advisor has become so well established in recent years that Congress has been increasingly prepared to grant the incumbent significant statutory responsibilities. For example, the Foreign Intelligence Surveillance Act and other legislation provides for statutory roles for the National Security Advisor.⁴ Executive Orders provide other formal responsibilities.

Particularly since the George H.W. Bush administration, the National Security Advisor has generally played several critical roles on behalf of the Commander-in-Chief. These include: overseeing and managing the national security policymaking process; monitoring the implementation of policy decisions; and providing confidential advice on national security matters to the President as required.

³ For additional information on oversight authorities and practices, see CRS Report RL30240, *Congressional Oversight Manual*, by Alissa M. Dolan et al.

⁴ The Foreign Intelligence Surveillance Act of 1978, as amended, requires that applications for orders for electronic surveillance for foreign intelligence purposes include a certification regarding the need for such surveillance by the Assistant to the President for National Security Affairs, or someone else designated by the President (see 50 U.S.C. §1804 (a)(7)); a similar requirement exists for applications for physical searches (50 U.S.C. §1823(a)(7)). The Assistant to the President for National Security Affairs is also assigned as chairman of two NSC committees—the Committee on Foreign Intelligence (50 U.S.C. §402(h)(2)(D)) and the Committee on Transnational Threats (50 U.S.C. §402(i)(2)(E)). These assignments were made as part of the FY1997 Intelligence Authorization Act (P.L. 104-293); in signing it, President Clinton stated his concerns about the provisions relating to the establishment of the two NSC committees, as “[s]uch efforts to dictate the President’s policy procedures unduly intrude upon Executive prerogatives and responsibilities. (“Statement on Signing the Intelligence Authorization Act for Fiscal Year 1997,” October 11, 1996, *Weekly Compilation of Presidential Documents*, October 14, 1996, p. 2039). Other legislation placed the National Security Advisor on the President’s Council on Counter-Narcotics (21 U.S.C. §1708(b)(1)(O)), and the Director of National Drug Control Policy is also required to work in conjunction with the Advisor “in any matter affecting national security interests.” (21 U.S.C. §1703(b)(10))

National Security Advisors have come from various professions; not all have had extensive experience in foreign and defense policy. The report of the Committees Investigating the Iran-Contra Affair recommended that the National Security Advisor not be a military officer on active duty.⁵ Indeed, the Iran-Contra affair led to considerable discussion about the appointment of Admiral Poindexter to the role of the National Security Advisor during the Reagan administration, discussed below.

Title 10 U.S.C. Provisions Relating to Three-Star and Four-Star Positions

The highest permanent grade in the U.S. Armed Forces is a two-star general or admiral (Major General in the Army, Air Force and Marine Corps; Rear Admiral in the Navy).⁶ Promotions to three-star and four-star general or admiral (Lieutenant General and General in the Army, Air Force, and Marine Corps; Vice Admiral and Admiral in the Navy) are temporary promotions held while the officer fills a position that carries the appropriate grade. The grades for some of these positions are specified in law – for example, the Chairman of the Joint Chiefs of Staff and the Service Chiefs – while others are designated as such by the President under 10 U.S.C. §601(a). This section of law provides that “[t]he President may designate positions of importance and responsibility to carry the grade of general or admiral or lieutenant general or vice admiral...An officer assigned to any such position has the grade specified for that position if he is appointed to that grade by the President with the advice and consent of the Senate.”

In the case of Lieutenant General McMaster, he most recently served in a three-star position as the Director, Army Capabilities Integration Center and Deputy Commanding General, Futures, U.S. Army Training and Doctrine Command.⁷ If he is to retain his rank as Lieutenant General while serving as National Security Advisor, the position must be designated as a position of importance and responsibility under 10 U.S.C. §601(a), and his appointment by the President must be confirmed by the Senate. However, according to 10 U.S.C. §601(b), officers leaving three-star or four-star positions may retain their rank for a limited time while transitioning between similarly graded three-star and four-star positions:

An officer who is appointed to the grade of general, admiral, lieutenant general, or vice admiral for service in a position designated under subsection (a) or by law to carry that grade shall continue to hold that grade...

(4) at the discretion of the Secretary of Defense, while the officer is awaiting orders after being relieved from the position designated under subsection (a) or by law to carry one of those grades, but not for more than 60 days beginning on the day the officer is relieved from the position, unless, during such period, the officer is placed under orders to another position designated under subsection (a) or by law to carry one of those grades, in which case paragraph (2) will also apply to the officer.⁸

⁵ U.S. Congress, Senate Select Committee on Secret Military Assistance to Iran and the Nicaraguan Opposition and House of Representatives Select Committee to Investigate Covert Arms Transactions with Iran, *Report of the Congressional Committees Investigating the Iran-Contra Affair*, With Supplemental, Minority, and Additional Views, 100th Cong., 1st sess., November 17, 1987, S.Rept. 100-216/H.Rept. 100-433, p. 426.

⁶ See also CRS Report R44389, *General and Flag Officers in the U.S. Armed Forces: Background and Considerations for Congress*, by Lawrence Kapp.

⁷ The Obama Administration transmitted the nomination of Major General McMaster for temporary promotion to the grade of lieutenant general—in accordance with his assignment to a “position of importance and responsibility” under 10 U.S.C. §601(a)—to the Senate on February 12, 2014. The Senate confirmed McMaster’s nomination to serve in the grade of lieutenant general on March 31, 2014.

⁸ See 10 U.S.C. §601(b)(4). See also Chairman of the Joint Chiefs Instruction 1331.01D, *Manpower and Personnel Actions Affecting General and Flag Officers*, dated August 1, 2010 (Current as of February 11, 2013), paragraph 11(d)(2): “To be considered under orders, the officer must be confirmed for the next 10 U.S.C. §601 position.”

Based on prior precedent, President Trump is anticipated to transmit Lieutenant General McMaster's nomination to be assigned to a "position of importance and responsibility" as a lieutenant general under 10 U.S.C. §601 to the Senate, with the nomination then anticipated to be referred to the Senate Armed Services Committee. The Senate Armed Services Committee, following committee deliberation, could favorably report Lieutenant General McMaster's nomination to the Senate, and then the whole of the Senate could consider McMaster's nomination to serve in the grade of lieutenant general as National Security Advisor.

Precedent for the Service of Three-Star General and Flag Officers as the National Security Advisor

Three individuals have served as the National Security Advisor while on active duty status as a three-star flag or general officer: Lieutenant General Brent Scowcroft (from November 3, 1975 through his retirement in December 1975); Vice Admiral John M. Poindexter (December 4, 1985-November 25, 1986); and Lieutenant General Colin L. Powell (November 23, 1987-January 20, 1989).

Brent Scowcroft

Service as Deputy National Security Advisor and National Security Advisor

On November 3, 1975, President Ford announced his appointment of Lieutenant General Brent Scowcroft to serve as National Security Advisor, succeeding Henry A. Kissinger.

Scowcroft had been appointed to serve as the Deputy National Security Advisor under Kissinger on April 6, 1973. During his service as Deputy National Security Advisor, Scowcroft was promoted to the grade of lieutenant general. On July 24, 1974, President Richard Nixon transmitted the nomination of Scowcroft to be assigned to a "position of importance and responsibility" as a lieutenant general to the Senate; the Senate confirmed Scowcroft's nomination to serve in the grade of lieutenant general as the Deputy National Security Advisor on August 16, 1974.

Following the announcement of Scowcroft's appointment to serve as National Security Advisor, President Ford transmitted a request on November 13, 1975 to the Senate for Scowcroft to retire in the grade of lieutenant general.⁹ The Senate confirmed Scowcroft's placement on the retired list in the grade of lieutenant general on December 15, 1975; the Air Force records Scowcroft's retirement as effective December 1, 1975.¹⁰

John M. Poindexter

On February 1, 1980, President Jimmy Carter transmitted the nomination of Rear Admiral John M. Poindexter for temporary promotion to the grade of rear admiral (upper half) to the Senate. The Senate confirmed Poindexter's nomination to serve in the grade of rear admiral (upper half) on February 28, 1980. Poindexter would serve as the Deputy Chief of Naval Education and Training and Chief of Staff of the Naval Education and Training Command in Pensacola, Florida until June 1981, when he joined the NSC staff as the Military Assistant to the National Security Advisor, who at the time was Richard V. Allen. Poindexter would serve in that role until October 1983.

⁹ *Public Papers of President Gerald R. Ford*, "The President's News Conference," November 3, 1975.

¹⁰ See U.S. Air Force, "Biographies: Lieutenant General Brent Scowcroft," available at <http://www.af.mil/AboutUs/Biographies/Display/tabid/225/Article/104997/lieutenant-general-brent-scowcroft.aspx>.

Service as Deputy National Security Advisor

On November 19, 1981, after Poindexter had joined the NSC staff as the Military Assistant to the National Security Advisor, President Ronald Reagan transmitted Poindexter's nomination for permanent promotion to the grade of rear admiral (upper half) to the Senate. The Senate confirmed Poindexter's permanent promotion to the grade of rear admiral (upper half) on December 14, 1981.

On October 17, 1983, Poindexter was appointed by President Reagan to serve as the Deputy National Security Advisor.¹¹ The National Security Advisor at that time was Robert C. McFarlane. As Poindexter held a two-star grade at that time, no special transmittal to the Senate and subsequent Senate confirmation was required.

On April 30, 1985, President Reagan transmitted the nomination of Poindexter to be assigned to a "position of importance and responsibility" as a vice admiral, under the provisions of 10 U.S.C. §601. The Senate confirmed Poindexter's nomination to serve in the grade of vice admiral as the Deputy National Security Advisor on May 15, 1985; no related committee hearing was held during Senate consideration of Poindexter's nomination to serve in that grade. Poindexter would serve as the Deputy National Security Advisor until December 4, 1985.

Service as National Security Advisor

On December 4, 1985, President Reagan announced his appointment of Poindexter to serve as the National Security Advisor, succeeding Robert C. McFarlane.¹² In accordance with Poindexter's appointment to serve as the National Security Advisor, President Reagan transmitted Poindexter's nomination to be assigned to a "position of importance and responsibility" as a vice admiral under 10 U.S.C. §601 to the Senate on May 12, 1986. The Senate confirmed Poindexter's nomination without holding a related committee hearing on May 20, 1986.

Poindexter would serve as National Security Advisor until November 25, 1986, when he resigned in the "wake of the public disclosure" of the Iran-Contra affair.¹³ Following his resignation as National Security

¹¹ *Public Papers of President Ronald W. Reagan*, "Appointments," October 17, 1983. On that same date, Reagan also announced his appointment of Robert C. McFarlane as National Security Advisor, replacing William P. Clark. Clark had replaced Richard V. Allen as National Security Advisor on January 4, 1982.

¹² *Public Papers of President Ronald W. Reagan*, "Appointment of John M. Poindexter as Assistant to the President for National Security Affairs," December 4, 1985.

¹³ Poindexter's resignation was tied to his alleged role in the Iran-Contra affair. The Iran-Contra affair refers to three interlocking series of events occurring chiefly in 1985 and 1986: (1) NSC officials secretly arranged the sale of weapons to Iran with an expectation that a basis of cooperation might be established with some elements of the Iranian regime, potentially leading to the release of American hostages then held in Lebanon; (2) NSC staff participated in potentially illegal fundraising efforts to support insurgents, known as Contras, operating in Nicaragua; and (3) some monies generated by the sale of arms to Iran were diverted to support the Contras. The Iran-Contra affair generated significant political and legal controversy—including discussions of what, if any, role the NSC staff should play in operational activities—and resulted in a series of investigations by the Executive Branch (the President's Special Review Board, also known as the Tower Commission) and by Congress (the joint House-Senate Committees on the Iran-Contra affair), as well as related legal proceedings (the Independent Counsel for Iran/Contra Matters). These investigations produced a number of recommendations to remedy perceived shortcomings in existing laws and procedures, and in the staffing and operations of the NSC. Many of these recommendations were subsequently implemented by the Reagan Administration, in part through the issuance of policy documents such as National Security Decision Directive (NSDD) 266, "Implementation of the Recommendations of the President's Special Review Board," which, among other matters, prescribed the organizational mechanisms of the NSC; clarified the responsibilities and functions of the National Security Advisor and the NSC staff; and directed that the NSC staff itself not undertake the conduct of covert activities. This discussion draws on the archived CRS Report 92-870F *The Iran-Contra Affair: Questions and Answers*, by Richard A. Best, Jr., retired CRS Specialist in National Defense, and Jack Maskell, retired CRS Legislative Attorney; see also "Part IV—Investigations and Cases: The National Security Council Staff, Chapter 3—United States v. John M. Poindexter," p. 123 in U.S. Court of Appeals for the District of Columbia Circuit, Division for the Purpose of Appointing Independent Counsel, Division No. 86-6, *Final Report of the Independent* (continued...)

Advisor, Poindexter worked as a special assistant for long-range planning to Admiral Carlisle A.H. Trost, then the Chief of Naval Operations.¹⁴ In this role, Poindexter reverted to his permanent grade of rear admiral (upper half), as required by 10 U.S.C. §601(b), and would retire from the Navy in that grade in December 1987.¹⁵

Colin L. Powell

Service as Deputy National Security Advisor

On December 18, 1986, President Reagan announced his intention to name Lieutenant General Colin L. Powell to serve as the Deputy National Security Advisor.¹⁶ In accordance with Powell's appointment, President Reagan transmitted Powell's nomination to be assigned to a "position of importance and responsibility" as a lieutenant general, under 10 U.S.C. §601 to the Senate on January 12, 1987. Without holding a related committee hearing, the Senate confirmed Powell's nomination to serve in the grade of lieutenant general as the Deputy National Security Advisor on May 20, 1987. Powell would serve as the Deputy National Security Advisor to National Security Advisor Frank C. Carlucci until November 23, 1987.

Service as National Security Advisor

On November 5, 1987, President Reagan announced his designation of Powell as the National Security Advisor, succeeding Frank C. Carlucci.¹⁷ In accordance with Powell's designation to be the National Security Advisor, President Reagan transmitted Powell's nomination to be assigned to a "position of importance and responsibility" as a lieutenant general under 10 U.S.C. §601 to the Senate on November 17, 1987.

On December 15, 1987, following the conclusion of a closed session, the Senate Armed Services Committee held an open hearing to consider Powell's nomination, as well as additional Department of Defense nominations pending before the committee.¹⁸ Powell's nomination to be assigned to a "position of importance and responsibility" as a lieutenant general under 10 U.S.C. §601 was approved by voice vote at the beginning of the hearing. Although the Senate Armed Services Committee considered holding a hearing specifically "on the matter" of Powell's nomination, it was ultimately decided, "after

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Counsel for Iran/Contra Matters, Volume I: Investigations and Prosecutions, Lawrence E. Walsh, Independent Counsel, August 4, 1993.

¹⁴ See for example "Poindexter Accepts Demotion to Two Stars to Stay in Navy," *The Washington Post*, March 4, 1987, p. A17; "Poindexter Stays in Navy, Reverts to Two-Star Rank," *Wall Street Journal*, March 4, 1987, p. 64; and "Poindexter Accepts Reduced Rank," *Associated Press*, as published in *The Hartford Courant*, March 4, 1987, p. A12A.

¹⁵ See for example "Poindexter Retires as Rear Admiral," *Los Angeles Times*, December 10, 1987, p. B8 and "Poindexter Retires With \$52,764 a Year," *The Washington Post*, December 10, 1987, p. A25.

¹⁶ *Public Papers of President Ronald W. Reagan*, "Appointment of Colin L. Powell as Deputy Assistant to the President for National Security Affairs," December 18, 1986. Powell received temporary promotion to the grade of lieutenant general on March 19, 1986 in accordance with his assumption of command for the U.S. Army's V Corps, then stationed in West Germany. Powell would serve as the commander of V Corps from June 1986 through December 1986.

¹⁷ *Public Papers of President Ronald W. Reagan*, "Designation of Lieutenant General Colin L. Powell as Assistant to the President for National Security Affairs," November 5, 1987.

¹⁸ U.S. Congress, Senate Committee on Armed Services, *To Act on Nominations of Samuel Lessey, Robert Page, Sr., Robert Clifton Duncan, Other Pending Military Nominations, Including the Nomination of Lt. Gen. Colin L. Powell to be Reassigned in the Grade of Lieutenant General*, held December 15, 1987 and published as U.S. Congress, Senate Committee on Armed Services, *Nominations Before the Senate Armed Services Committee, First Session, 100th Congress, 100th Cong., 1st sess., S.Hrg. 100-573* (Washington: GPO, 1988).

considerable debate,” not to do so.¹⁹ The Senate Armed Services Committee, however, did request that Powell respond to a series of questions for the record; Powell’s subsequent supplied answers were included in the published hearing record.²⁰

During the hearing, Senator Nunn offered a statement providing “background on the Powell nomination” so that the “people in the audience will know what has transpired here.”²¹ In “[explaining] why General Powell’s nomination was before the committee” and the committee’s decision to approve Powell’s nomination, Senator Nunn referenced the committee’s “statutory role regarding confirmation of senior military officers.” Senator Nunn then described the three options available to President Reagan for Powell’s service as the National Security Advisor: (1) Powell’s retirement from military service and assignment to the position as a civilian; (2) Powell’s relinquishment of his temporary grade as lieutenant general and assignment to the position in his permanent grade of major general; or (3) Powell’s assignment to the position and reappointment as a lieutenant general.²² As President Reagan chose to have Powell serve as his National Security Advisor as a lieutenant general, Senator Nunn noted the Senate’s role under 10 U.S.C. §601 in confirming Powell to serve in the grade of lieutenant general as National Security Advisor.

Senator Nunn then noted that while precedent had been established for the service of an active duty general or flag officer as National Security Advisor, and as Deputy National Security Advisor, Powell’s nomination “[raised] the issue of whether a military officer should serve as” National Security Advisor in light of the recommendation by the majority report of the congressional committees investigating the Iran-Contra affair that “Presidents adopt as a matter of policy the principle that the [National Security Advisor] should not be an active military officer.”²³ Senator Nunn further stated that the committee had “not made any decision on the appropriateness of a military officer” serving as National Security Advisor, and had “only decided as to this particular case at this particular time” to authorize Powell’s service in the grade of lieutenant general as National Security Advisor.²⁴

¹⁹ Ibid, p. 596.

²⁰ Ibid, p. 596. Powell was asked by Senator Nunn to provide his views on what, if any, operational role the NSC staff should play in covert actions; his concept of the duties of the National Security Advisor; his views on personally “[dealing] with the issue of independence of thought and analysis” from the Department of Defense as National Security Advisor; and his concept of the responsibilities of the National Security Advisor under U.S. law and the Constitution. Senator Carl Levin asked Powell to answer a series of questions regarding his alleged role in the Iran-Contra affair, and his deposition to the staff of the Iran-Contra Committee.

²¹ Ibid, pp. 592-593.

²² Ibid, pp. 593-594.

²³ In addition to Poindexter’s service as Deputy National Security Advisor and National Security Advisor under President Reagan, Alexander M. Haig Jr. (under President Richard Nixon), Brent Scowcroft (under President Gerald Ford), and Jonathan Howe (subsequent to the committee’s discussion, under President George H.W. Bush) also served as Deputy National Security Advisor while on active duty status as a general or flag officer. Douglas Lute also served as the Assistant to the President and Deputy National Security Advisor for Iraq and Afghanistan (under President George W. Bush and President Barack Obama) while on active duty status as a general officer. See *ibid*, p. 595; see also U.S. Congress, Senate Select Committee on Secret Military Assistance to Iran and the Nicaraguan Opposition and House of Representatives Select Committee to Investigate Covert Arms Transactions with Iran, *Report of the Congressional Committees Investigating the Iran-Contra Affair*, With Supplemental, Minority, and Additional Views, 100th Cong., 1st sess., November 17, 1987, S.Rept. 100-216/H.Rept. 100-433, p. 426, recommendation 23, which further encouraged the placement of limitations “on the tour of military officers assigned to the staff of the National Security Council.” In contrast with the recommendations of the majority report, however, the minority report of the congressional committees investigating the Iran-Contra affair characterized many of the majority report’s recommendations as “proposing needlessly detailed rules for the organization of the executive branch” (see *ibid*, p. 583).

²⁴ During the first session of the 100th Congress, a bill was introduced in the Senate on March 11, 1987 (S. 715) that would have prohibited persons serving on active duty as a commissioned officer of the U.S. Armed Forces from serving as the National Security Advisor, or “otherwise [being] employed within the Executive Office of the President as the primary assistant to the President on national security affairs.” While S. 715 was referred to the Senate Armed Services Committee, the bill was not (continued...)

Senator Nunn called attention to the role of the National Security Advisor in providing the “President with the best possible advice on national security matters,” and in “[coordinating] the advice from the major departments and agencies in the area of national security,” roles which he viewed as requiring personal autonomy in addition to “enormous knowledge and skill.”²⁵ While Senator Nunn stated that he wished to avoid suggesting that “General Powell “[did] not have the required independence” to serve as National Security Advisor, he articulated his personal concern that “any active duty military officer who serves [as National Security Advisor] may over a period of time be subject to an inherent conflict between his responsibilities to the President and his own professional future in the service.”²⁶

Nevertheless, Senator Nunn noted that “the President of the United States has a constitutional right, according to many people, to appoint who he deems to be his best choice for these important positions as advisors to him.”²⁷ Then-Ranking Member John Warner, Senator John McCain, and Senator J. James Exon all strongly concurred with Senator Nunn’s statement. Senator Warner expressed that the “President should have a right, if not inherent in the Constitution, a right of the strongest magnitude, to select whomever he wishes as his personal advisors,” while Senator Exon stated his view that “in an advisory position not requiring confirmation by the Senate, the President of the United States should have maximum leeway to select whomever he wishes to fill those important duties.”²⁸ As further support for his argument, Senator Warner also cited the provisions of title 10, United States Code, section 720:

The President, by and with the advice and consent of the Senate, may appoint a general officer of the Army, Air Force, or Marine Corps or a flag officer of the Navy as the Chief of Staff to the President and may designate such position as a position of importance and responsibility under [10 U.S.C. §601].²⁹

The Senate confirmed Powell’s nomination to serve in the grade of lieutenant general as the National Security Advisor on December 18, 1987.

Powell would serve as National Security Advisor until January 20, 1989.

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reported out of committee. See also U.S. Congress, Senate Committee on Armed Services, *Nominations Before the Senate Armed Services Committee, First Session, 100th Congress*, 100th Cong., 1st sess., S.Hrg. 100-573 (Washington: GPO, 1988), p. 595-596.

²⁵ Ibid, p. 595.

²⁶ Ibid, p. 595. Senator Nunn also opined that “[a]ssignment of a military officer to this senior, sensitive position...raises serious concerns about civilian control of the military. Of course, the White House is the heart of civilian control, and that particular position is even closer in terms of physical proximity to the President than either the Secretary of Defense or the Secretary of State.” Later in the hearing (see *ibid*, p. 599), Senator Carl Levin discussed with Senator Nunn the statutory restrictions on prior military service for individuals serving in certain senior-level Department of Defense positions, such as the Secretary of Defense. While noting that the position and role of the National Security Advisor was not “perfectly analogous” to such Department of Defense positions, Senator Levin indicated that such restrictions perhaps established “precedents” for similar restrictions on prior or active duty military service for an individual serving as the National Security Advisor. For further discussions on the principle of civilian control of the military, as well as civilian-military relations, see CRS Report R44725, *Statutory Restrictions on the Position of Secretary of Defense: Issues for Congress*, by Kathleen J. McInnis.

²⁷ U.S. Congress, Senate Committee on Armed Services, *Nominations Before the Senate Armed Services Committee, First Session, 100th Congress*, 100th Cong., 1st sess., S.Hrg. 100-573 (Washington: GPO, 1988), p.595.

²⁸ Ibid, p.598-600. Senator McCain indicated that he saw it as “clear...that the Constitution of the United States allows the President of the United States to appoint whomsoever he wishes from whatever walk of life, whatever part of our society he chooses” to serve in Presidential advisory positions not requiring confirmation by the Senate.

²⁹ Ibid, p. 598. Senator Warner saw these provisions as providing “implicit” support for the President “[selecting] any subordinate that he wished,” even if that person was “an active duty military officer.” 10 U.S.C. §720 was codified by the Defense Officer Personnel Management Act (P.L. 96-513) of 1980. In doing so, P.L. 96-513 also repealed previously existing statutory provisions (10 U.S.C. §3531 and 10 U.S.C. §8531) that separately authorized the service of general officers of the Army and the Air Force as Chief of Staff to the President.
