

# CHAPTER 11

## *THE SENATE CONFIRMATION PROCESS*

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By law, certain executive branch positions require appointment by the president and confirmation by the Senate. Once the president announces a choice for a position, the nomination is officially transmitted to the Senate where it is referred to the committee of jurisdiction for consideration. Typically, the nominee is required to provide certain background information to the committee and to appear before it at a confirmation hearing. Afterwards, the committee reports the nomination, usually with its recommendation, to the full Senate which takes final action on the appointment.

From 1947 until 1953, the only Agency position subject to Senate confirmation was that of the DCI. In 1953, the deputy DCI's position was added. It was not until 1989 that a third position—the Agency's inspector general—was made subject to Senate confirmation, and in 1994, Congress added a fourth—the Agency's general counsel. From 1947 until 1976, nominations for the DCI and DDCI positions were referred to the SASC. After 1976, they were referred to the SSCI, as were the nominations for the other Agency positions that came to require Senate confirmation.

This chapter is limited to the Senate's handling of nominees for DCI. While several nominees have received negative votes, never has a majority of the Senate—nor for that matter a majority of the committee responsible for handling the nomination—voted to reject a nominee for the DCI position. Four nominees, however, have withdrawn after their nomination was sent to the Senate: two before confirmation hearings had begun, and two after such hearings had begun. The circumstances of each of these cases are described in what follows.

### **The Early DCIs: Souers through Dulles**

President Truman appointed the first three DCIs—Souers, Vandenberg, and Hillenkoetter—without Senate approval. Prior to the enactment of the National Security Act of 1947, the DCI position was established by executive directive, rather than by law, and did not require Senate confirmation.

This changed in July 1947, with the enactment of the landmark legislation. Those appointed DCI could come from either military or civilian ranks, the new law provided, but a military officer appointed DCI would be required to sever personal ties to the military. Truman's nominee to be the first "statutory" DCI under the new law, Admiral Hillenkoetter, was a military officer, whom he had earlier appointed pursuant to executive authority. The Senate confirmed him by voice vote in December 1947 without a formal hearing.

The first person nominated to the DCI's position to receive a formal (albeit perfunctory) confirmation hearing was Hillenkoetter's successor, LTG Walter Bedell "Beetle" Smith, who had served as Eisenhower's chief of staff during World War II, and as US ambassador to the Soviet Union from 1946 to 1949. At the time Truman nominated him, Smith was serving as commanding general of the 1st Army. Hailed by Republicans and Democrats alike, the appointment sailed through the congressional process in the span of a week. Smith was nominated on 21 August 1950 and testified at a confirmation hearing before the SASC on 24 August. He emphasized his intent to follow the law and comply with congressional intent and was unanimously confirmed four days later.<sup>1</sup>

The nomination of Smith's successor, Allen Dulles, also enjoyed smooth sailing. The first civilian to be nominated for the DCI's position, Dulles had been in OSS during World War II and had continued to serve as a consultant to Vandenberg and Hillenkoetter while practicing law in New York City. In November 1950, Dulles returned to the CIA to serve as a consultant to Smith, went on to become deputy director for plans (the predecessor of the DDO), and later DDCI to Smith.

By the time Dulles was nominated, he had already established himself with the CIA subcommittees and enjoyed broad support within the Congress. Affable and gregarious by nature, his experience and enthusiasm for intelligence work was evident. The fact that President Eisenhower had also nominated his brother, John Foster, to be secretary of state was seen not as a liability by the Congress but an asset. When Dulles appeared at his confirmation hearing before the SASC on 12 February 1953, "all joined in praising the nominee and asking no questions," according to the memorandum commemorating the occasion prepared by the Agency's legislative liaison, Walter Pforzheimer.<sup>2</sup> The hearing lasted 10 minutes. Dulles, too, was confirmed by unanimous vote of the full Senate.

Two months later, in April 1953, Congress amended the National Security Act of 1947 to require presidential appointment and Senate confirmation for

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<sup>1</sup> Knapp, *The First Thirty Years*, 53; Barrett, *CIA and Congress*, 91.

<sup>2</sup> CIA draft study, Vol. I, 39–40.

the DDCI as well as the DCI. The amendment also prohibited military officers, active duty or retired, from holding both positions at the same time.

### **John McCone: 1962**

In the wake of the fiasco at the Bay of Pigs, President Kennedy decided that the Agency needed a change of leadership. To replace Dulles, he chose John A. McCone, a tough-minded California businessman and lifelong Republican. McCone had held several positions at the Pentagon between 1947 and 1951 and, from July 1958 until the end of the Eisenhower administration, had served as chairman of the Atomic Energy Commission (AEC), where he had made an impression on Kennedy as well as other members of Congress. The chairmanship of the AEC had also exposed him to a considerable degree to the analysis and, to a lesser degree, the operations of the Intelligence Community.

Kennedy announced McCone's appointment on 27 September 1961, and because Congress was out of session, he was sworn in as a recess appointment on 29 November 1961. It was not until Congress reconvened in January 1962 that his confirmation hearings could be held. In the intervening months, McCone came under criticism, both from members of Congress and the press, reflecting to some extent the sudden sensitivity that now attached to the occupant of the DCI's position after the Bay of Pigs. Some critics questioned McCone's qualifications for the job; others worried that his strong anticommunist views would hamper his objectivity as DCI. Muckraking journalist Drew Pearson wrote a series of columns questioning his prior business dealings and suggesting conflicts of interest were likely to arise if he were confirmed as DCI.

All of these concerns were raised at McCone's 18 January 1962 confirmation hearing, the first such hearing for a prospective DCI to involve controversy. In addition to answering his critics, McCone introduced into the record a letter he had requested and received from President Kennedy, in effect, setting forth his charter as DCI. It indicated that McCone would serve as the government's principal intelligence officer, whose functions would include coordination and leadership of the total US foreign intelligence effort.<sup>3</sup>

During the course of the confirmation hearing, SFRC Chairman Fulbright complained that he did not know enough about McCone's foreign policy views to support his nomination and intended to vote against it on the floor to

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<sup>3</sup> John F. Kennedy, "Memorandum to McCone," 16 January 1962, in *Central Intelligence: Origin and Evolution*, Warner (ed.), 67–68.

protest the relative passivity of the SASC's oversight of the CIA. SASC Chairman Russell immediately challenged this statement.<sup>4</sup>

Notwithstanding Fulbright's criticism, three days after the hearing, the SASC unanimously reported the nomination to the Senate floor. While the Senate confirmed McCone on 31 January, by a vote of 71 to 12, it came only after Fulbright and other senators had reiterated the concerns they had earlier expressed in committee. It was the first time, in fact, that members of the Senate had ever cast negative votes for a person nominated to the DCI's position.

### **William F. Raborn: 1965**

William Raborn was a retired vice admiral, best known for his work on the Navy's Polaris missile program. After his retirement from the Navy in 1963 he had worked in private industry until 12 April 1965, when President Johnson tapped him to replace McCone as DCI.

Although Raborn had no experience in intelligence or foreign affairs, he had earned plaudits from the SASC for his work on the Polaris program—which he had brought in under budget and ahead of schedule—that overshadowed any concerns the committee might otherwise have had about his inexperience in intelligence matters.<sup>5</sup> After a perfunctory hearing before the SASC, Raborn was confirmed by the full Senate by voice vote and sworn in on 28 April 1965, two weeks after his nomination had been submitted.

### **Richard M. Helms: 1966**

At the time President Johnson nominated him to be the next DCI, Richard M. Helms was serving as DDCI to Raborn. Given his own inexperience, Raborn had relied heavily on Helms during his short tenure not simply to run the Agency but to assist him in handling relations with Capitol Hill.<sup>6</sup> Helms had spent virtually his entire professional life in intelligence. After a short stint as a journalist before the war and service in the wartime Navy, Helms had joined OSS in 1943 and had stayed with its successor organizations that were ultimately melded into the CIA in 1947. He spent his entire career at the Agency in operations, ultimately rising to become McCone's deputy director of plans in 1962.

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<sup>4</sup> Robarge, *John McCone*, 43.

<sup>5</sup> Helms, *A Look Over My Shoulder*, 246.

<sup>6</sup> *Ibid.*, 251.

Johnson announced Helms's appointment on 18 June 1966, and the Senate confirmed him 10 days later. The incumbent DDCI, his appointment came as no surprise to members. Moreover, he had been through the confirmation process a year earlier when nominated to be DDCI and had accompanied Raborn to all of his appearances before the SASC subcommittee. Adding to the appeal of Helms's appointment, Raborn had shown little appreciation of, or aptitude for, intelligence work during his short tenure. He had also antagonized SFRC Chairman Fulbright by refusing to answer questions (on grounds of revealing sources and methods) about the Fulbright scholarship program and whether it was being used as a cover for intelligence activities. Having him bow out as DCI in favor of Helms essentially removed this source of irritation for the SASC.<sup>7</sup>

Thus, the committee greeted Helms's nomination with something of a sigh of relief. While his extensive involvement in the operations of the Agency over a 20-year period might have prompted members to inquire into his role in such activities, especially operational failures like the Bay of Pigs, they did not do so. His confirmation hearing produced no controversy whatsoever.

### **James R. Schlesinger: 1973**

Helms had a difficult relationship with President Nixon that had culminated in his refusal to cooperate in what later became known as the Watergate cover-up.<sup>8</sup> At a November 1972 meeting at Camp David, Nixon told him he would be replaced. A month later, the president announced the appointment of James R. Schlesinger to be DCI.

At the time of his appointment, Schlesinger was serving as chairman of the AEC, a post to which Nixon had appointed him in June 1971. Prior to this, Schlesinger had served as assistant director of the Bureau of the Budget (the predecessor of the Office of Management and Budget), where, at Nixon's behest, he had conducted a study of the Intelligence Community that had led Nixon to strengthen the DCI's fiscal management role over the Community. Prior to his government service, Schlesinger had been an economics professor at the University of Virginia and served two years at a government think tank.

The SASC held a perfunctory hearing in mid-January, clearing the way for Schlesinger's unanimous confirmation by the full Senate on 23 January 1973.

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<sup>7</sup> Knapp, *The First Thirty Years*, 248–49.

<sup>8</sup> Helms, *A Look Over My Shoulder*, 4–13.

### William E. Colby: 1973

In May 1973, less than five months after being confirmed, Schlesinger was nominated to be secretary of defense as part of a cabinet shuffle necessitated by the resignation of certain cabinet officials during the Watergate scandal. To take his place as DCI, Nixon nominated a career CIA officer, William E. Colby, who at the time was serving as the DDP.

Colby had served with the OSS and after the war had gone to work at the New York law firm of William Donovan, the former head of the OSS. With the outbreak of the Korean War in 1950, Colby returned to Washington and joined the CIA. Like Helms, his career was spent in clandestine operations. Before becoming executive director in 1971, his principal preoccupation had been the war in Vietnam. From 1958 until 1962, he served as deputy station chief and station chief in Saigon. This was followed by six years at Headquarters, where he oversaw the Agency's operations in the region during the US military buildup there. In 1968, he went on leave without pay from the Agency to accept a position (with ambassadorial rank) with the Agency for International Development that ultimately made him responsible for the village pacification program in South Vietnam, which included a controversial program known as Phoenix.

The Phoenix program, begun in mid-1968 after the Tet offensive, was created to root out the Viet Cong's secret apparatus from the South Vietnamese countryside. South Vietnamese police and intelligence services worked with local villagers to identify known or suspected infiltrators and then turn that information over to the South Vietnamese military for follow-up action. In some cases, known or suspected Viet Cong were reportedly killed. While the South Vietnamese government had responsibility for carrying out the program, albeit with direction and assistance provided by the US organization headed by Colby, CIA ultimately became identified with the program, in part because of Colby's involvement and in part because of the methods used in the program.

In 1971, a subcommittee of the House Government Operations Committee held public hearings on the conduct of the Vietnam War that focused on the Phoenix program, and Colby was called back to Washington to testify. Although he staunchly denied that Phoenix was "a program of assassination," he admitted that South Vietnamese military officers involved in the program may have carried out isolated assassinations. He assured the committee, however, that the United States had effectively put an end to such abuses.<sup>9</sup>

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<sup>9</sup> Prados, *Lost Crusader*, 235–36.

When Colby was nominated two years later to be DCI, his involvement in the Phoenix program was again raised as an issue. To make matters worse for him, the country was in the throes of the Watergate scandal, and press articles were appearing alleging CIA's involvement in that and other activities, for example, the 1970 presidential election in Chile (see chapters 1, 8, and 9). For the first time in the Agency's history, the leaders of its subcommittees in the SASC, SAC, and HASC began calling for special investigations of the Agency's activities. The atmosphere had never before been as hostile for a DCI's confirmation, and when the hearings had to be put off to give SASC Chairman Stennis time to recuperate after being shot in a street crime, Colby's critics had more time to prepare themselves.

In the end, the SASC held three days of contentious hearings on Colby's nomination in July 1973, during which time he faced an unprecedented barrage of hostile questioning, both with respect to alleged CIA illegalities and his role in the Phoenix program. The most serious accusation, in fact, came from a Massachusetts congressman, Robert Drinan, who told the committee that Colby had misled him and other members of a congressional delegation about the program during a visit to Saigon in 1969. This testimony later led a member of the SASC to confide to the CIA's legislative liaison that he also felt misled by Colby regarding the Phoenix program.<sup>10</sup> As part of Colby's confirmation process, the SASC also took the occasion, for the first time, to invite witnesses, pro and con, to testify publicly about the workings of the Intelligence Community.

The Senate confirmed Colby on 1 August 1973 by a vote of 83 to 13, but only after he had endured a considerable battering before the committee.

### **George H.W. Bush: 1976**

President Ford dismissed Colby in November 1975, in the midst of the Church and Pike investigations and nominated George H.W. Bush as his successor. Bush was a Navy pilot during World War II. After the war, he completed his education and entered into private business. In 1966, he was elected to Congress and served two terms. At the beginning of the Nixon administration, he was appointed to be US ambassador to the United Nations. He went on to serve as chairman of the Republican National Committee and, at the time of his appointment as DCI, was serving as first chief of the US liaison office in Beijing.

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<sup>10</sup> Ford, *William E. Colby*, 15.

In announcing the appointment, President Ford said he was putting Bush into the job to restore the public's confidence in the Intelligence Community. He would personally meet with his new DCI each week, Ford said, to ensure that the activities of US intelligence agencies were being properly supervised.

On 30 January 1976, the Senate confirmed Bush by a vote of 64 to 27, and he was sworn in immediately. Although the number of negative votes was the largest ever cast against a nominee for the DCI's position to that point, it had more to do with the disenchantment with the Agency evident within Congress at the time than with the nominee himself. Indeed, Bush's confirmation hearing before the SASC did not produce serious controversy.

### **President Carter's Appointments: Sorensen and Turner**

After the presidential election of 1976, Bush resigned as DCI, and President-elect Jimmy Carter announced that his choice to replace Bush would be Theodore Sorensen, who had been a speechwriter and confidant of President Kennedy. Before his confirmation hearing even began, however, problems developed, primarily in the form of his admission in earlier courtroom testimony that he had used classified White House material in the book he had written about the Kennedy administration. It was also revealed that Sorensen had taken a tax deduction when he donated these materials to the National Archives. Perhaps more troubling to the committee members themselves was the nominee's seemingly cavalier attitude toward them. When SSCI Chairman Inouye asked to see him before the confirmation hearing, Sorensen reportedly told him, "I'm pretty busy. I don't think I have the time." Inouye exploded, and Sorensen managed to find time to see him. But for a committee already troubled by Sorensen's lack of experience in intelligence and foreign affairs, this prelude did not bode well for his nomination. On 17 January 1977, moments before his confirmation hearing was to begin, Sorensen advised the president he was withdrawing his name from consideration.<sup>11</sup>

A few weeks later, on 7 February 1977, Carter announced the appointment of ADM Stansfield Turner to the DCI's position. A former Rhodes scholar, Turner spent 30 years as a naval officer. At the time of his appointment, he was serving as commander-in-chief of Allied Forces in Southern Europe. He would remain on active duty, it was announced, while serving as DCI.

Turner's confirmation hearings were the first to be held before the SSCI. The committee had two days of hearings, including one day hearing testimony of three public witnesses. Not surprisingly, the hearings focused heavily on

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<sup>11</sup> Smist, *Congress Oversees*, 130.

congressional oversight and the rights of American citizens. Turner promised to cooperate with the committee and said he would resign rather than implement directives that he believed were “unconstitutional, illegal, or in conflict with moral standards.”<sup>12</sup>

Turner’s nomination was voted out of committee by unanimous vote, and the Senate confirmed him by voice vote. He was sworn in on 7 March 1977.

### **William J. Casey: 1981**

Ronald Reagan was elected president in November 1980, in part based upon his campaign promise to revitalize the Intelligence Community. To help him do this, he nominated a 67-year-old Wall Street lawyer, William J. Casey, to be his DCI. Casey had been Reagan’s campaign manager. While his experience in intelligence was dated (he had served in OSS) as well as limited (he had served for a year on the President’s Foreign Intelligence Advisory Board), he nonetheless had maintained an interest in foreign affairs over the course of his legal career. In 1969, he served on an advisory council for the Arms Control and Disarmament Agency. From 1973 to 1974, he was chairman of the Securities and Exchange Commission, providing him experience at the helm of a federal agency.

While the incoming SSCI chairman, Barry Goldwater, had pressed the administration to appoint ADM Bobby Ray Inman, the outgoing NSA director, instead of Casey, Reagan stood firm. After initially refusing Casey’s offer of the DDCI’s position, Inman later accepted the appointment.<sup>13</sup>

Casey’s confirmation hearing before the SSCI took place on 13 January 1981, a week before Reagan was inaugurated. The nominee asserted that his goals as DCI would be “rebuilding, performance, and security.” When members pressed him on his understanding of, and intent to comply with, the recently enacted oversight statute—establishing his obligations vis-à-vis the committee—Casey replied that he intended to “comply fully with the spirit and letter” of the law. In subsequent questioning, however, he also observed that “rigid accountability . . . can impair performance.”<sup>14</sup> Apparently the committee did not find that qualification troubling, however, voting unanimously to report Casey’s nomination to the floor. On 27 January 1981, the full Senate approved the nomination by a vote of 95 to 0.<sup>15</sup>

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<sup>12</sup> Senate Select Committee on Intelligence, *Nomination as Director of Central Intelligence of Adm. Stansfield Turner*.

<sup>13</sup> Woodward, *Veil*, 47.

<sup>14</sup> *Ibid.*, 83–84.

### **The First Gates Nomination: 1987**

Casey suffered a brain seizure on 15 December 1986, just before he was to testify before the SSCI on the Agency's role in the Iran-contra matter (see chapter 9). Incapacitated, he officially resigned as DCI on 28 January 1987. To replace him, President Reagan nominated 43-year-old Robert M. Gates. A career intelligence officer, Gates had risen through the ranks of CIA analysts to become DDI under Casey and then his DDCI in April 1986.

Gates enjoyed good relations with both oversight committees, but it became apparent that his nomination could not move forward until his role in the Iran-contra scandal had been fully explored and any doubts about his conduct removed. Gates had been aware of the administration's arms sales to Iran and was also in a position to have learned of the private network the NSC staff established to support the contras in Nicaragua (see chapter 9). The SSCI attempted to delve into his involvement in these matters during a day-long confirmation hearing and at one point got him to admit that the Agency "actively shunned information" with regard to how the contras were being funded. At the same time, the joint congressional investigation of Iran-contra and the criminal probe by the newly appointed independent counsel, Judge Lawrence Walsh, were only just beginning. Whether any of these investigations would implicate Gates in the scandal could not be known. Needing more time to determine what action the committee should take, Chairman Boren announced a vote on the nomination would be delayed for two weeks. Meanwhile, the Tower Commission investigating the Iran-contra matter for the White House issued a report broadly criticizing the Agency's role in Iran-contra and implying that some of its analysis had crossed the line in terms of advocating policy.<sup>16</sup>

With trouble on the horizon, and no prospect that it could be laid to rest any time soon, Gates asked the White House to withdraw his nomination on 3 March 1987.

### **William H. Webster: 1987**

Shortly after the withdrawal of the Gates nomination, President Reagan nominated the incumbent director of the FBI, William H. Webster, to be the next DCI. While Webster lacked experience in intelligence matters and foreign affairs, he had a reputation for uncompromising integrity. Highly

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<sup>15</sup> See chapter 10 for an account of the SSCI's investigation of charges against Casey that emerged six months later.

<sup>16</sup> CIA draft study, Vol. III, 141.

regarded for his leadership of the FBI, Webster was also a former federal appellate judge. With the Agency embroiled in the Iran-contra scandal, his nomination immediately gained broad, bipartisan support.

At his confirmation hearing on 8 April 1987, Webster promised to stay out of politics. He would no longer serve as a member of the president's cabinet as Casey had done, he told the committee. He would be forthright with the committees and pledged to keep them "fully informed" of all covert action activities. If he ever found himself in sharp disagreement with the president over such activities as the arms-for-hostages deals with Iran, he would resign rather than carry out the president's orders.<sup>17</sup>

Reassured by these commitments and eager to have a confirmed official at the helm of the CIA as the Iran-contra investigations were playing out, the SSCI unanimously supported Webster's nomination as did the full Senate.

### **The Second Gates Nomination: 1991**

On 24 June 1991, Robert M. Gates was nominated for a second time to be the DCI, this time by President George H.W. Bush. Gates is the only person ever to be nominated twice for the DCI's position and the only person to be nominated by different presidents. After he withdrew his first nomination, Gates remained as Webster's deputy until January 1989, when he moved to the White House to become deputy assistant to the president for national security affairs in the newly elected Bush administration.

The problem that had plagued his first nomination—his knowledge of, and involvement in, the Iran-contra affair—had not entirely gone away, however. Although the congressional investigations had ended in 1987, the criminal investigation of Iran-contra, headed by Independent Counsel Lawrence Walsh, was still ongoing when Gates was nominated a second time. While it appeared unlikely after four years that Gates would be indicted, until Walsh submitted his final report this could not be ruled out.

A few weeks after the Gates nomination went to the Senate, one of the CIA officers involved in the Iran-contra scandal pled guilty to two misdemeanor charges of withholding of information from Congress. At the time his plea was entered, the officer publicly asserted there had been greater knowledge of the Iran-contra affair within CIA than had previously come to light. Although he did not specifically implicate Gates, the committee delayed his confirmation hearings until September when the testimony of the former officer could

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<sup>17</sup> *Ibid.*, 142.

be arranged. It also voted to give the officer immunity from further prosecution in order to obtain his testimony.

During this interim period, the committee began receiving other allegations regarding the nominee. A number of former CIA analysts who had served under Gates during the Casey period alleged that he had repeatedly slanted or distorted intelligence analysis to suit the political predilections of Casey and the Reagan administration. Another set of allegations, coming from outsiders or raised by the news media, suggested Gates had been involved in a range of other dubious activities during his tenure at the CIA, including withholding information from Congress, illegally sharing arms and intelligence with other governments, and involvement in political activity. The committee staff investigated this latter set of allegations but never held public hearings on them because none of them could be substantiated. The allegations of the former CIA analysts, however, proved more troubling.

The committee staff interviewed the former analysts making the allegations, and these led to interviews of other analysts who had served under Gates and had knowledge of the cases where “politicization” was alleged to have occurred. In all, the staff interviewed 80 current and former analysts and reviewed several hundred documents prior to the hearings.

The confirmation hearings began on 16 September 1991. For the first two days the committee questioned Gates, mostly regarding his views of congressional oversight and his commitment to the oversight process. Two days of hearings on Gates’s role in the Iran-contra affair followed, including the testimony of the CIA officer who alleged there had been greater knowledge within the CIA than previously disclosed. His testimony did not prove detrimental where Gates was concerned. The allegations of “politicization” the committee had received were initially considered in closed session since the analytical reports at issue were still classified, but upon hearing testimony adverse to the nominee, the committee decided it had no choice but to air the allegations in public. Witnesses were directed to “sanitize” their statements for public release; members were told by the committee leadership what the appropriate bounds for their questioning would be.

On 1 and 2 October 1991, the committee held public hearings on the issue of “politicization,” where six current and former analysts, both for and against the nominee, presented testimony. On 3 and 4 October, Gates returned to testify in response to the allegations that had been made against him. In all, he responded to 20 separate allegations in his rebuttal, ending with a list of actions he planned to take, if confirmed, to deal with the perceived problem of politicization.

On 18 October, by a vote of 11 to 4, the SSCI voted to report the nomination to the full Senate. To accompany the nomination, the committee filed a 225-page report summarizing the results of the committee's exhaustive inquiry.<sup>18</sup> It was by far the longest report on a nominee for the DCI's position ever to be filed. Members were left, however, to draw their own conclusions from the record.

Calling the investigation the most thorough ever conducted for a nominee to the DCI's position, SSCI Chairman Boren explained in detail why he had decided to vote for Gates. On Iran-contra, while he was bothered by Gates "lack of aggressiveness" in responding to the information that had come into his possession, he did not believe Gates had done anything illegal. He was placed in a difficult position, Boren acknowledged, and had learned from his experience.

On the politicization issue, Boren found there was as much in the record to suggest intelligence was not being politicized during Gates's tenure (numerous assessments that ran counter to the Reagan administration's position) as there was to suggest that it was. While he thought Gates had come across at times as abrasive and insensitive to the analysts that worked for him, he also acknowledged the pressures of the position that he held. In an unusual closing to his statement in support of the nomination, Boren saluted the "courageous" CIA analysts who had come forward and said he would be watching to ensure that no adverse action would be taken against them. He did not expect this from Gates, he said, but he would be watching. "This will be a time for healing, not stridency," Boren continued, "for compassion, not vindictiveness. A time to get on with the future."<sup>19</sup>

The full Senate approved the Gates nomination by a vote of 64 to 31—the most negative votes ever cast for a nominee to the DCI's position. Because President Bush was defeated in the 1992 election, however, Gates ended up serving in the position for only a year. None of the analysts who had come forward during the confirmation process subsequently complained to the committee that Gates had taken adverse action against them.

### **President Clinton's Choices: Woolsey, Carns, Deutch, Lake, and Tenet**

President Clinton nominated five men to serve as DCI, the most of any president. Two of his nominees, however—Carns and Lake—withdraw without a vote on their nominations.

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<sup>18</sup> Senate Select Committee on Intelligence, *Report on the Nomination of Robert M. Gates*.

<sup>19</sup> *Ibid.*, 210.

Clinton's first nominee, R. James Woolsey, was a partner in a Washington DC law firm but had significant experience in government: general counsel of the SASC in the early 1970s, under secretary of the navy during the Carter administration, and a member of two US arms control delegations during the 1980s. Immediately prior to being nominated, he had chaired a task force commissioned by DCI Gates to evaluate US satellite collection programs. While having a limited personal relationship with the president-elect, Woolsey was well known within the national security establishment in Washington.

The nomination hearing held before the SSCI on 2 February 1993, proved noncontroversial, and the committee reported his nomination by unanimous vote. Two days later, the Senate confirmed him by voice vote. A commitment that Woolsey made at the hearing, however, subsequently created a minor problem for the committee. He had owned shares in a privately held corporation that held contracts with the Agency. While his interest was small enough that the Office of Government Ethics had determined that no conflict-of-interest issue was raised under applicable law, one member of the SSCI was bothered by the situation. When he raised the matter with Woolsey at his confirmation hearing, Woolsey promised to sell the shares within a year.<sup>20</sup> When the committee learned that Woolsey had yet to sell the stock after a year had passed, the committee chairman sent the DCI a letter expressing his dissatisfaction.

In December 1994, after a year of sparring with the oversight committees over the Ames case (see chapter 10), Woolsey resigned with less than two years in the job. To replace him, Clinton nominated a recently retired Air Force general, Michael P.C. Carns, who had last served as Air Force's vice chief of staff. A highly decorated fighter pilot during the Vietnam War, Carns had an MBA from Harvard and had served as director of the Joint Staff during the Persian Gulf War. Although he was not an intelligence specialist per se, he had had considerable exposure to the intelligence business over his military career.

After the nomination was announced, however, the SSCI received allegations that Carns had violated US immigration laws when he brought a Filipino servant into the United States from a previous posting in the Philippines. The committee passed these allegations to the FBI. When the ensuing investigation also raised questions about his wife's involvement in the matter and it came to light that his son had previously admitted to having had a peripheral role in a petty theft at Bolling AFB, Carns decided to withdraw his nomination rather than put his family through the ordeal of a public hearing.<sup>21</sup> Citing the "venomous and abusive accusations . . . aimed at smearing my wife and my

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<sup>20</sup> Senate Select Committee on Intelligence, *Nomination of R. James Woolsey*.

<sup>21</sup> *Washington Post*, "Carns Withdraws as CIA Nominee," 11 March 1993.

children,” Carns said they had “killed my willingness . . . to proceed with the confirmation.”<sup>22</sup>

The same day Carns withdrew, Clinton announced the nomination of John M. Deutch to be the next DCI. Deutch was then serving as the deputy secretary of defense and reportedly had turned down the DCI’s post when it was first offered. However, when Clinton agreed to give the position Cabinet rank as it had had under President Reagan, Deutch agreed to accept it.<sup>23</sup>

A professor of chemistry at MIT, Deutch’s résumé reflected considerable government experience as well as work with the Intelligence Community. He had served as director of energy research at DOE in the late 1970s. During the 1980s, he was a paid consultant to the National Intelligence Council and had served on the DCI’s Nuclear Intelligence Panel. Initially appointed as under secretary of defense for acquisitions and technology, Clinton later made him deputy secretary.

Capitol Hill welcomed his appointment, especially after Woolsey’s rocky tenure and the relatively long interim that had followed his resignation. After a perfunctory confirmation hearing, where he pledged to undertake tough reforms at the Agency in the wake of the Ames case, Deutch was confirmed by the Senate on 9 May 1995, by a vote of 98 to 0 and sworn in the following day. Deutch also stayed in the DCI’s job a relatively short time, resigning on 15 December 15 1996.

To succeed Deutch, Clinton nominated his national security adviser, Anthony Lake, also an academic with considerable government experience. A professor at both Amherst and Mount Holyoke Colleges in Massachusetts, Lake had been a foreign service officer early in his professional career and had served as director of policy planning at the State Department during the Carter administration. Mild-mannered and scholarly, he had served four comparatively noncontroversial years as national security adviser.

Lake’s nomination was sent to the Senate on 9 January 1997, roughly coinciding with the appointment of a new SSCI chairman, Senator Richard Shelby (R-AL). Twice, Shelby set dates for a confirmation hearing only to postpone them on the grounds that there were “unanswered, perplexing questions” about Lake that the committee needed time to explore.<sup>24</sup> Two weeks later, after two Republican senators on the committee told the press they would probably vote for Lake—giving him a majority on the committee—Shelby announced he would hold no hearing on the nomination at all until the com-

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<sup>22</sup> Carns, Press Release.

<sup>23</sup> *Washington Post*, “Carns Withdraws.”

<sup>24</sup> *New York Times*, “More Delays in Hearings to Confirm CIA Chief.”

mittee had been given access to all of the FBI's files on the nominee, including raw data from the files. The SSCI had never asked for this kind of data before, causing one Republican senator who objected to the request to publicly complain, "The whole confirmation process has become more and more outrageous . . . people feel it's their duty to engage in character assassination."<sup>25</sup> While the administration initially objected to the release of these files, Shelby was ultimately allowed to see them.

When the confirmation hearings began in mid-March, Shelby opened the proceedings by announcing that the committee's investigation was still ongoing and that he intended to explore thoroughly "the many issues surrounding this nomination."<sup>26</sup> He went on to say these included Lake's role in the administration's acquiescence in allowing Iranian arms to transit Bosnian territory, an issue the SSCI had previously investigated (see chapter 9); the state and future of the CIA; the NSC's involvement with DNC fundraisers; and settlement of Lake's alleged ethics violations.<sup>27</sup> The Justice Department and Office of Government Ethics had cleared Lake of any ethics violations prior to the hearing.

As Shelby and other Republican senators on the committee read their opening statements, it was apparent they intended to give the nominee a hard time. Shelby began by questioning Lake's management experience and his alleged failure to ensure that information passed to the White House regarding an alleged covert effort by the Chinese government to buy influence during the US election campaign had been adequately disseminated. Other Republicans questioned Lake's objectivity; his failure to notify Congress of the Iranian arms transshipments; his alleged failure to hold his own NSC staff accountable; alleged Clinton administration failures in Somalia, Bosnia, and Haiti; and his role in naming political contributors to the President's Foreign Intelligence Advisory Board. One questioned Lake about a comment he had made during an interview that seemed to indicate he was not sure whether Alger Hiss had been a spy.

At the end of three days of contentious questioning by the Republican members of the committee, Shelby insisted that more information was needed before a vote on the nomination could take place. CIA learned that Shelby staffers had asked NSA if there were any derogatory information on Lake in its database of communications intercepts.<sup>28</sup> Lake also learned that Shelby had

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<sup>25</sup> *New York Times*, "Leaders in Senate Demand FBI Files on CIA Nominee."

<sup>26</sup> Senate Select Committee on Intelligence, *Nomination of Anthony Lake to be the Director of Central Intelligence*.

<sup>27</sup> *Ibid.*, 3.

<sup>28</sup> Tenet, *In the Center of the Storm*, 7.

insisted that, before they voted, other members of the committee read the raw investigative reports the FBI had prepared.

For Lake, this was the last straw. In a letter to the president dated 18 March 1997, he asked that his nomination be withdrawn. While he believed he would prevail if his nomination ever came to a vote in the full Senate, Lake wrote that he had “finally lost patience” with the process and that, if he continued, he was apt to lose his dignity as well. This is a “nomination process with no end in sight,” he told the president, “a political circus” that is politicizing the Agency as well as the Senate committee. Given the way the process had been conducted he would have a hard time working with the committee even if he were confirmed. Hopefully, he concluded, “people of all political views . . . will demand that Washington give priority to policy over partisanship, to governing over ‘gotcha.’”<sup>29</sup>

On 21 April 1997, Clinton nominated George J. Tenet, who had been serving as acting DCI since Deutch’s departure the previous December, to be the DCI in his own right.<sup>30</sup> Prior to this, Tenet had been DDCI to Deutch and had served on the NSC staff during Woolsey’s tenure. From 1985 until 1993, he had been a member of the staff of the SSCI, serving as its staff director between 1989 and 1993. While other staff of the intelligence committees had gone on to senior positions within the Intelligence Community, none had ever risen to the DCI’s position.

The committee held only one day of public hearings on the Tenet nomination. Shelby signaled at the outset that he would not challenge the nominee, and other Republicans fell in line.<sup>31</sup> One pointed out the need to put someone into the job after a five-month hiatus. While the nominee was asked substantive questions, the vitriol that marked the Lake hearings was conspicuously absent. No issue of significance emerged.

The day after the hearing, however, the committee was informed that the attorney general, in response to a request from the White House counsel’s office, had opened a preliminary investigation into whether Tenet had failed to disclose ownership of certain stock and real property in filling out a government financial disclosure form in 1993. Tenet’s father had purchased the assets at issue without his son’s knowledge. Tenet’s brother had apparently discovered them in 1994—after the father’s death—in a safe deposit box in Athens, Greece. After the discovery and his interest in the assets had been determined, Tenet had reported them on his financial disclosure statement.

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<sup>29</sup> Anthony Lake, “Letter to President Clinton,” reprinted in the *New York Times*.

<sup>30</sup> For an account of how this came about, see Tenet, *At the Center of the Storm*, 5–10.

<sup>31</sup> *Washington Post*, “In Turnabout, GOP Senators Welcome CIA Nominee.”

The White House counsel reviewed the matter in 1995 in connection with Tenet's appointment as DDCI and did not believe a referral to the Justice Department was required. Now the lawyers at the White House were saying that such a referral was required.

The leaders of the SSCI were briefed on the matter and immediately indicated they did not see it as an obstacle to Tenet's confirmation. However, the Justice investigation had to run its course before a vote on the nomination could be taken. This did not occur for two months. On 8 July 1997, the committee was told that Tenet had been cleared of any wrongdoing.<sup>32</sup> He was unanimously voted out of committee and approved by voice vote of the full Senate on 11 July, almost seven months after Deutch had resigned.

Tenet was DCI until 2004, second in longevity only to Allen Dulles. He also became the first DCI since Richard Helms to be held over from one administration to another.

#### **Porter Goss: 2004**

Tenet resigned as DCI on 11 July 2004, as the investigations of the Agency's failure to predict the 9/11 terrorist attacks were coming to an end and as its evident miscalculations with respect to Iraqi weapons of mass destruction (see chapters 7 and 8) were being publicly documented.

To replace him, President George W. Bush nominated Porter J. Goss, a Florida congressman who for the preceding seven years had chaired the HPSCI. He was the second nominee for DCI to have served in Congress (Bush's father was the first), but the first to have also served as an overseer of the Agency. Goss also had the distinction of previously having served as a case officer in the DO during the early part of his professional career.

Making his appointment all the more extraordinary, it came at a time when Congress was debating whether to create a new director of national intelligence (DNI), as recommended by the 9/11 Commission, with responsibility for the Intelligence Community as a whole (see chapter 2). Thus, at the time his nomination was announced, Goss did not know if the new position would be established or, if it were created, whether he would be named to it.

Goss had chaired the HPSCI since 1997 and by most accounts had run the committee in a bipartisan manner, particularly compared to the operation of most House committees. In 2004, however, he announced his decision to retire; 2004 was also a year marked by a hotly contested presidential election.

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<sup>32</sup> *Washington Post*, "Tenet Cleared for Panel Vote on CIA Post."

Earlier in the year, Goss had criticized the putative Democratic nominee on several occasions, as well as the Democratic Party itself, for their lack of support for intelligence. He had taken unusually partisan positions (for him) in defense of the Bush administration's performance on Iraq, causing the SSCI's Democratic vice chairman to explicitly warn Bush not to appoint him as Tenet's successor.<sup>33</sup>

Bush ignored the advice and nominated Goss anyway. Not surprisingly, at the confirmation hearings that followed, several Democrats on the committee took him to task for his earlier rhetoric. In more than five hours of grueling questioning, Goss recanted some of his earlier partisan attacks, admitting at one point that he did, in fact, believe the Democratic Party "strongly supports the Intelligence Community." He also conceded that "at times, perhaps, I engaged in debate with a little too much vigor or enthusiasm." Assuring the committee that he had a "commitment to nonpartisanship," Goss promised to run the Agency without regard for politics.<sup>34</sup>

With the support of several Democrats, the committee reported Goss's nomination to the full Senate by a vote of 12 to 4. On 22 September 2004, he was approved 77–17, as both houses were attempting to craft legislation to overhaul the government's intelligence apparatus.<sup>35</sup> On 17 December, this effort came to fruition when President Bush signed into law the Intelligence Reform and Terrorism Prevention Act of 2004. As a result, the office of Director of Central Intelligence, which had served as the focal point of US intelligence for 58 years, was abolished. Goss was reappointed as director of the CIA while he waited for a new DNI to be named. His former post would be abolished upon the swearing in of the new DNI. That occurred on 21 April 2005.

## AUTHOR'S COMMENTARY

### Openness of the Confirmation Process

No other country in the world brings the director of its national intelligence service before its legislature (and the world) for a public examination before taking the reins of power. But Congress wanted a measure of control over who was appointed to run the CIA, and the only way to accomplish this under the Constitution was to enact a law requiring the Senate to "advise and consent" to the appointment. Necessarily, confirmation by the Senate is an open process:

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<sup>33</sup> See Press Statement of Senator Jay Rockefeller, June 25, 2004.

<sup>34</sup> *Washington Post*, "At Hearing, Goss Vows Nonpartisan CIA Leadership."

<sup>35</sup> *Washington Post*, "Senate Confirms Rep. Goss as Intelligence Director."

the president must name the appointee and the Senate must publicly vote to confirm or reject the appointment, implying that there be a record open to all 100 members of the Senate who ultimately must cast a vote on the nomination.

Occasionally, however, the requirement to have an open process creates problems for the committee handling the nomination (since 1976, the SSCI). Nominees who have had roles in the intelligence business may not be able to be questioned about all of them in public. Similarly, the rules of security classification might constrain witnesses who might wish to testify for or against the nominee. Members might also find it difficult to question nominees without intelligence experience about how they would handle a matter that is still classified. While the committee has the option of going into closed session to take testimony from the nominee or other witnesses, it must still find a way to make relevant information public if it has the potential for affecting the vote of the full Senate on the nomination.

### **Significance of the Confirmation Process**

Considering that the confirmation process has never failed to confirm a DCI whose nomination has come to a vote, one might be inclined to dismiss it as a sideshow. It is anything but that.

Nominees for the director's position are first vetted by the executive branch. Security issues are considered; conflicts of interest, adjudicated; and potentially embarrassing personal situations, identified. If a nomination goes forward, the results of these inquiries are furnished the committee handling the nomination, which has the option of reopening matters of concern to it. The committee also requires the nominee to respond to a questionnaire designed to elicit information apart from that it receives from the executive branch. The responses to this questionnaire can sometimes raise new issues.

The committee may also have issues raised by third parties who wish to testify. Typically, the staff evaluates the allegations the committee has received and recommends to the leaders of the committee whether any of these issues deserve airing at the hearings.

The nominee typically arranges "courtesy calls" in advance of the hearings with all committee members willing and able to see nominee. These meetings usually take place in private in the senator's office, giving each participant an opportunity to size up the other outside the glare of the public spotlight and before the nominee formally appears at his confirmation hearing. If a senator has concerns about the nomination, he or she will typically raise them in this initial meeting and have the nominee respond informally. If the senator is satisfied with the response, the issue is not likely to be pursued at the hearing.

The confirmation process will typically address issues that have been identified in the course of this preliminary process. Although issues are sometimes surfaced for the first time at the confirmation hearings themselves, this is rare. If the preliminary process did not identify issues of significance, the hearing will likely consist of opening statements by the members and nominee, followed by questions which, to the outside world, seem desultory and perfunctory. The committee may appear to be letting the nominee off the hook, when, in fact, it has conducted a thorough inquiry and found nothing significant. On the other hand, if the preliminary inquiry identified issues, the hearing process will expand as necessary to flesh them out to the satisfaction of the members concerned.

Confirmation hearings are also occasions not simply to elicit information from the nominee but also to extract commitments in terms of future relationship with the committee. Since the Iran-contra scandal, for example, every nominee for DCI has been asked whether he will commit to notifying the oversight committees within 48 hours of a covert action finding being signed by the president. While the law does not expressly require this, any nominee who answers that question in the negative is creating a significant obstacle to confirmation. Moreover, assuming the nominees know that if they violate this pledge, the committee will hold them to account.

Since only the SSCI conducts confirmation hearings, its members are given a “leg up” on their counterparts on the HPSCI. By dint of the confirmation process, they are given an opportunity to acquaint themselves with the new director before they have to deal with him or her on substantive issues. Of course, this can be either a benefit or a detriment depending upon what kind of initial impression the new director has made. The confirmation process sets the tone for what the director’s relationship is apt to be with the SSCI. For the HPSCI, it takes a bit longer.

### **The Ideal Nominee?**

Administrations generally seek to appoint people whose nominations, they believe, will not be controversial and will sail through the confirmation process. Where the DCI job is concerned, however, this is apt to be shortsighted. Nominees without experience in intelligence may not have a track record they can be questioned about, but they may also lack the knowledge and aptitude to be an effective director. Nominees who have no prior personal relationship with the president they serve may escape being asked whether they would ever shape analysis to support the president’s policy preferences, but they may later find it difficult to relate to the president, unable to influence policy at all.

Occasionally, administrations have looked for “managers” to fill the DCI position—people with proven management skills. But these skills, too, may not translate well into the intelligence environment. Nominees from the business world may be frustrated by the rules and pace of the federal bureaucracy, and their experience in the private sector may subject them to special scrutiny during the confirmation process. Nominees from the military, whose management skills and patriotism might augur well for their confirmation, may not possess a background or aptitude in foreign affairs.

It is difficult to glean much wisdom on this subject by looking at the past. Only five nominees for the DCI’s position generated much controversy during their confirmation process: McCone, Colby, Gates (twice), Lake, and Goss. Of these, one was a businessman (McCone); two had spent most of their careers as intelligence professionals (Colby and Gates); and two were serving in high-ranking governmental posts when they were nominated (Lake as national security adviser and Goss as chairman of the HPSCI). Of the five, the one who generated the most controversy (Gates) was arguably the best qualified, being both a career intelligence officer and a confidante of both presidents who appointed him.

Experience does seem to suggest, however, that the timing of nominations may have as much to do with the degree of controversy generated by the confirmation process as the nominees themselves. The nominees who received the largest number of negative votes in the Senate all came along in the midst or aftermath of a major scandal or intelligence failure: McCone, after the Bay of Pigs; Colby, in the midst of Watergate; Bush, in the midst of the Church and Pike Committee investigations; and Gates, in the middle of, and again after, the Iran-contra scandal. On the other hand, all of the nominees who came along after a prior nominee had withdrawn (Turner after Sorensen; Webster after Gates; Deutch after Carns; and Tenet after Lake) have benefited from the desire of the committee considering their nomination to “get someone in the job” without further delay.

Experience also demonstrates that partisanship must be taken into account, both with respect to the nominee’s past and with respect to the political makeup of the committee considering the nomination. Nominees who are viewed as overly partisan, either because of their relationship with the incumbent president (Lake) or because of positions they have previously taken (Goss), can expect to encounter hostile questions from one side of the committee or the other. How serious a concern this is likely to be in a particular case will depend upon how partisan the committee itself is at this juncture.