

**Statement by Louis Fisher,  
The Constitution Project,  
Before the  
Senate Committee on Foreign Relations,  
“Libya and War Powers”  
June 28, 2011**

Chairman Kerry, Ranking Member Lugar, and members of the committee. Thank you for the invitation to testify on the Obama administration’s legal and constitutional justifications for military operations in Libya. I start by examining four claims by the administration: (1) the President may obtain “authorization” not from Congress but from the U.N. Security Council, (2) the President may rely on NATO for additional “authorization,” (3) military operations in Libya do not amount to “war,” and (4) those operations do not constitute “hostilities” within the meaning of the War Powers Resolution. My statement concludes by turning to (5) the administration’s reliance on S. Res. 85 for legislative support, (6) references to “non-kinetic assistance,” and (7) the claim that the administration received a “mandate” to act militarily from such sources as the Security Council, the “Libyan people,” and a “broad coalition” including the Arab League.

**Presidential Doubletalk<sup>1</sup>**

Fundamental to the Constitution is the framers’ determination that Congress alone can initiate and authorize war. To secure the principle of self-government and popular sovereignty, the decision to take the country from a state of peace to a state of war is reserved to the elected members of Congress. The framers recognized that the President could exercise defensive powers “to repel sudden attacks.”<sup>2</sup> John Jay expressed the framers’ intent with these words: “It is too true, however disgraceful it may be to human nature, that nations in general will make war whenever they have a prospect of getting any thing by it; nay, absolute monarchs will often make war when their nations are to get nothing by it, but for purposes and objects merely personal, such as a thirst for military glory, revenge for personal affronts, ambition, or private compacts to aggrandize or support their particular families or partisans. These and a variety of other motives, which affect only the mind of the sovereign, often lead him to engage in wars not sanctified by justice or the voice and interests of his people.”<sup>3</sup> Professor Michael J. Glennon, who previously

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<sup>1</sup> For readers who may regard this subhead as disrespectful of Presidents, doubletalk is defined as “language that appears to be earnest and meaningful but in fact is a mixture of sense and nonsense; inflated, involved, and often deliberately ambiguous language.” For presidential deception on war powers from James Polk to the present, see Louis Fisher, “When Wars Begin: Misleading Statements by Presidents,” 40 Pres. Stud. Q. 171 (2010), available at <http://www.loufisher.org/docs/wi/432.pdf>.

<sup>2</sup> 2 The Records of the Federal Convention of 1787, at 318-19 (Max Farrand, ed. 1966).

<sup>3</sup> John Jay, Federalist No. 4, The Federalist 101 (Benjamin F. Wright, ed., MetroBooks 2002).

served this committee as Legal Counsel, recently underscored that the Constitution “places the decision to go to war in the hands of Congress.”<sup>4</sup>

From 1789 to 1950, all wars were either authorized or declared by Congress. That pattern of 160 years changed abruptly when President Harry Truman unilaterally took the country to war against North Korea. Unlike all previous Presidents, he did not go to Congress to seek statutory authority. He and his aides did what other Presidents have done to expand their control over the war power. They go to great lengths to explain to Congress and the public that what they are doing is not what they are doing. President Truman was asked at a news conference if the nation was at war. He responded: “We are not at war.” A reporter inquired if it would be more correct to call the military operations “a police action under the United Nations.” Truman quickly agreed: “That is exactly what it amounts to.”<sup>5</sup> There are many examples of Presidents and executive officials being duplicitous with words. A price is paid for that conduct, both for the President and the country. Korea became “Truman’s War.”

During Senate hearings in June 1951 on the military conflict in Korea, Secretary of State Dean Acheson conceded the obvious by admitting “in the usual sense of the word there is a war.”<sup>6</sup> What sense of the word had he been using? Federal and state courts had no difficulty in defining the hostilities in Korea as war. They were tasked with interpreting insurance policies that contained the phrase “in time of war.” A federal district court noted in 1953: “We doubt very much if there is any question in the minds of the majority of the people of this country that the conflict now raging in Korea can be anything but war.”<sup>7</sup>

In August 1964, President Lyndon Johnson told the nation about a “second attack” in the Gulf of Tonkin, a claim that was doubted at the time and we now know was false.<sup>8</sup> In 2005, the National Security Council released a study that concluded there was no second attack. What had been reported as a second attack consisted of late signals coming from the first.<sup>9</sup> Johnson used stealth and deception to escalate the war, forever damaging his presidency. He learned that being a War President is not the same as being a Great President.

In 1998, during a visit to Tennessee State University, Secretary of State Madeleine Albright took a question from a student who wanted to know how President Bill Clinton could go to war against Iraq without obtaining authority from Congress. She explained: “We are

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<sup>4</sup> Michael J. Glennon, “The Cost of ‘Empty Words’: A Comment on the Justice Department’s Libya Opinion,” *Harv. Sec. J. Forum*, April 14, 2011, at 7, available at <http://harvardnsj.com/2011/04/the-cost-of-empty-words-a-comment-on-the-justice-departments-libya-opinion>.

<sup>5</sup> *Public Papers of the Presidents, 1950*, at 504. On July 13, at a news conference, President Truman again called the Korean War a “police action.” *Id.* at 522.

<sup>6</sup> “Military Situation in the Far East” (Part 3), hearings before the Senate Committees on Armed Services and Foreign Relations, 82d Cong., 1st Sess. 2014 (1951).

<sup>7</sup> *Weissman v. Metropolitan Life Ins. Co.*, 112 F.Supp. 420, 425 (S.D. Cal. 1953). See also *Gagliomella v. Metropolitan Life Ins. Co.*, 122 F.Supp. 246 (D. Mass. 1954); *Carius v. New York Life Insurance Co.*, 124 F.Supp. 388 (D. Ill. 1954); *Western Reserve Life Ins. Co. v. Meadows*, 261 S.W.2d 554 (Tex. 1953); and A. Kenneth Pye, “The Legal Status of the Korean Hostilities,” 45 *Geo. L. J.* 45 (1956).

<sup>8</sup> Louis Fisher, *Presidential War Power* 129-33 (2d ed. 2004).

<sup>9</sup> Robert J. Hanyok, “Skunks, Bogies, Silent Hounds, and the Flying Fish: The Gulf of Tonkin Mystery, 2-4 August 1964,” *Cryptologic Quarterly*, declassified by the National Security Agency on November 3, 2005, available at [http://www.nsa.gov/public\\_info/\\_files/gulf\\_of\\_tonkin/articles/rel\\_1\\_skunks\\_bogies.pdf](http://www.nsa.gov/public_info/_files/gulf_of_tonkin/articles/rel_1_skunks_bogies.pdf).

talking about using military force, but we are not talking about a war. That is an important distinction.”<sup>10</sup> Iraqis subjected to repeated and heavy bombings from U.S. cruise missiles understood the military operation as war. These distinctions can be easily manipulated to meet the political needs of the moment.

The above examples provide some context for understanding the efforts of the Obama administration to define and redefine such words as “authorization,” “war,” “hostilities,” “non-kinetic,” and “mandate.”

## 1. “Authorization” from the Security Council

President Obama and his legal advisers repeatedly state that he received “authorization” from the U.N. Security Council to conduct military operations in Libya. On March 21, he informed Congress that U.S. military forces commenced military initiatives in Libya as “authorized by the United Nations (U.N.) Security Council . . . .”<sup>11</sup> His administration regularly speaks of “authorization” received from the Security Council. As I have explained in earlier studies, it is legally and constitutionally impermissible to transfer the powers of Congress to an international (U.N.) or regional (NATO) body.<sup>12</sup> The President and the Senate through the treaty process may not surrender power vested in the House of Representatives and the Senate by Article I. Treaties may not amend the Constitution.

In a May 20 letter to Congress, President Obama spoke again about “authorization by the United Nations Security Council.” He said that congressional action supporting the military action in Libya “would underline the U.S. commitment to this remarkable international effort.” Moreover, a resolution by Congress “is also important in the context of our constitutional framework, as it would demonstrate a unity of purpose among the political branches on this important national security matter. It has always been my view that it is better to take military action, even in limited actions such as this, with Congressional engagement, consultation, and support.” If that has always been his view, it was his obligation to come to Congress in February to seek legislative authorization.

## 2. “Authorization” from NATO

On March 28, in an address to the nation, President Obama announced that after U.S. military operations had been carried out against Libyan troops and air defenses, he would “transfer responsibilities to our allies and partners.” NATO “has taken command of the

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<sup>10</sup> Barton Gellman, “Students Receive Albright Politely,” *Washington Post*, February 20, 1998, at A19.

<sup>11</sup> Text of a Letter from the President to the Speaker of the House of Representatives and the President Pro Tempore of the Senate, March 21, 2011, available at <http://www.whitehouse.gov/the-press-office/2011/03/21/letter-president-regarding-commencement-operations-libya>.

<sup>12</sup> Louis Fisher, “Obama’s U.N. Authority?,” *National Law Journal*, April 18, 2011, available at <http://www.loufisher.org/docs/wp/authority.pdf>; Louis Fisher, “Sidestepping Congress: Presidents Acting Under the UN and NATO,” 47 *Case Western Res. L. Rev.* 1237 (1997), available at <http://www.loufisher.org/docs/wp/424.pdf>; Louis Fisher, “The Korean War: On What Legal Basis Did Truman Act?,” 89 *Am. J. Int’l L.* 21 (1995), available at <http://www.loufisher.org/docs/wp/425.pdf>.

enforcement of the arms embargo and the no-fly zone.”<sup>13</sup> Two days earlier, State Department Legal Advisor Harold Koh spoke of this transfer to NATO: “All 28 allies have also now authorized military authorities to develop an operations plan for NATO to take on the broader civilian protection mission under Resolution 1973.”<sup>14</sup> The May 20 letter from President Obama to Congress explained that by April 4 “the United States had transferred responsibility for the military operations in Libya to the North Atlantic Treaty Organization (NATO) and the U.S. involvement has assumed a supporting role in the coalition’s efforts.”

Nothing in these or any other communications from the administration can identify a source of authorization from NATO for military operations. Like the UN Charter, NATO was created by treaty. The President and the Senate through the treaty process may not shift the authorizing function from Congress to outside bodies, whether the Security Council or NATO. Section 8 of the War Powers Resolution specifically states that authority to introduce U.S. armed forces into hostilities or into situations wherein involvement in hostilities is clearly indicated by the circumstances “shall not be inferred . . . from any treaty heretofore or hereafter ratified unless such treaty is implemented by legislation specifically authorizing the introduction of United States Armed Forces into hostilities or into such situations and stating that it is intended to constitute specific statutory authorization within the meaning of this joint resolution.”<sup>15</sup> The authorizing body is always Congress, not the Security Council or NATO.

### **3. Military Operations in Libya: Not a “War”**

The Obama administration has been preoccupied with efforts to interpret words beyond their ordinary and plain meaning. On April 1, the Office of Legal Counsel reasoned that “a planned military engagement that constitutes a ‘war’ within the meaning of the Declaration of War Clause may require prior congressional authorization.” But it decided that the existence of “war” is satisfied “only by prolonged and substantial military engagements, typically involving exposure of U.S. military personnel to significant risk over a significant period.”<sup>16</sup> Under that analysis, OLC concluded that the operations in Libya did not meet the administration’s definition of “war.” If U.S. casualties can be kept low, no matter the extent of physical destruction to another nation and loss of life, war to OLC would not exist within the meaning of the Constitution. If another nation bombed the United States without suffering significant casualties, would we call it war? Obviously we would. When Pearl Harbor was attacked on December 7, 1941, the United States immediately knew it was at war regardless of the extent of military losses by Japan.

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<sup>13</sup> Remarks by the President in Address to the Nation on Libya, March 28, 2011, at 2, available at <http://www.whitehouse.gov/the-press-office/2011/03/28/remarks-president-address-nation-libya>.

<sup>14</sup> Harold Hongju Koh, Legal Advisor U.S. Department of State, “Statement Regarding Use of Force in Libya,” March 26, 2011, appearing before the American Society of International Law Annual Meeting, at 2, available at <http://www.state.gov/s/l/releases/remarks/159201.htm>.

<sup>15</sup> 87 Stat. 555, 558, sec. 8(a)(2) (1973).

<sup>16</sup> U.S. Justice Department, Office of Legal Counsel, “Authority to Use Military Force in Libya,” April 1, 2011, at 8, available at <http://www.justice.gov/olc/2011/authority-military-use-in-libya.pdf>.

#### 4. No “Hostilities” Under the WPR

In response to a House resolution passed on June 3, the Obama administration on June 15 submitted a report to Congress. A section on legal analysis (p. 25) determined that the word “hostilities” in the War Powers Resolution should be interpreted to mean that hostilities do not exist with the U.S. military effort in Libya: “U.S. operations do not involve sustained fighting or active exchanges of fire with hostile forces, nor do they involve the presence of U.S. ground troops, U.S. casualties or a serious threat thereof, or any significant chance of escalation into a conflict characterized by those factors.”

This interpretation ignores the political context for the War Powers Resolution. Part of the momentum behind passage of the statute concerned the decision by the Nixon administration to bomb Cambodia.<sup>17</sup> The massive air campaign did not involve “sustained fighting or active exchanges of fire with hostile forces,” the presence of U.S. ground troops, or substantial U.S. casualties. However, it was understood that the bombing constituted hostilities.

According to the administration’s June 15 report, if the United States conducted military operations by bombing at 30,000 feet, launching Tomahawk missiles from ships in the Mediterranean, and using armed drones, there would be no “hostilities” in Libya under the terms of the War Powers Resolution, provided that U.S. casualties were minimal or nonexistent. Under the administration’s June 15 report, a nation with superior military force could pulverize another country (perhaps with nuclear weapons) and there would be neither hostilities nor war. The administration advised Speaker John Boehner on June 15 that “the United States supports NATO military operations pursuant to UNSCR 1973 . . . .”<sup>18</sup> By its own words, the Obama administration is supporting hostilities.

Although OLC in its April 1 memo supported President Obama’s military actions in Libya, despite the lack of statutory authorization, it did not agree that “hostilities” (as used in the War Powers Resolution) were absent in Libya. Deprived of OLC support, President Obama turned to White House Counsel Robert Bauer and State Department Legal Adviser Harold Koh for supportive legal analysis.<sup>19</sup> It would have been difficult for OLC to credibly offer its legal justification. The April 1 memo defended the “use of force” in Libya because President Obama “could reasonably determine that such use of force was in the national interest.” OLC also advised that prior congressional approval was not constitutionally required “to use military force” in the limited operations under consideration.<sup>20</sup> The memo referred to the “destruction of Libyan military assets.”<sup>21</sup>

It has been recently reported that the Pentagon is giving extra pay to U.S. troops assisting with military actions in Libya because they are serving in “imminent danger.” The Defense Department decided in April to pay an extra \$225 a month in “imminent danger pay” to service

<sup>17</sup> Thomas F. Eagleton, *War and Presidential Power: A Chronicle of Congressional Surrender 150-83* (1974).

<sup>18</sup> Letter from the Department of State and Department of Defense to Speaker John A. Boehner, June 15, 2011, at 1.

<sup>19</sup> Charlie Savage, “2 Top Lawyers Lose Argument on War Power,” *New York Times*, June 18, 2011, at A1.

<sup>20</sup> OLC Opinion, *supra* note 16, at 1.

<sup>21</sup> *Id.* at 6.

members who fly planes over Libya or serve on ships within 110 nautical miles of its shores. To authorize such pay, the Pentagon must decide that troops in those places are “subject to the threat of physical harm or imminent danger because of civil insurrection, civil war, terrorism or wartime conditions.”<sup>22</sup> Senator Richard Durbin has noted that “hostilities by remote control are still hostilities.” The Obama administration chose to kill with armed drones “what we would otherwise be killing with fighter planes.”<sup>23</sup>

It is interesting that various administrations, eager to press the limits of presidential power, seem to understand that they may not – legally and politically – use the words “war” or “hostilities.” Apparently they recognize that using words in their normal sense, particularly as understood by members of Congress, federal judges, and the general public, would acknowledge what the framers believed. Other than repelling sudden attacks and protecting American lives overseas, Presidents may not take the country from a state of peace to a state of war without seeking and obtaining congressional authority.

## 5. Non-Kinetic Assistance

The Obama administration has distinguished between “kinetic” and “non-kinetic” actions, with the latter apparently referring to no military force. The March 21 letter from President Obama to Congress spoke of clearly kinetic activities. U.S. forces had “targeted the Qadhafi regime’s air defense systems, command and control structures, and other capabilities of Qadhafi’s armed forces used to attack civilians and civilian populated areas.”<sup>24</sup> By May 20, in a letter to Congress, President Obama stated: “Since April 4, U.S. participation has consisted of: (1) non-kinetic support to the NATO-led operation . . . .” Elements not directly using military force were listed: intelligence, logistical support, and search and rescue missions. However, the letter identified these continued applications of military force: “aircraft that have assisted in the suppression and destruction of air defenses in support of the no-fly zone” and “since April 23, precision strikes by unmanned aerial vehicles against a limited set of clearly defined targets in support of the NATO-led coalition’s efforts.”<sup>25</sup>

## 6. Support from S. Res. 85

OLC in its April 1 memo relied in part on legislative support from the Senate: “On March 1, 2011, the United States Senate passed by unanimous consent Senate Resolution 85. Among other things, the Resolution ‘strongly condemn[ed] the gross and systematic violations of human rights in Libya, including violent attacks on protesters demanding democratic reforms,’ ‘call[ed] on Muammar Gadhafi to desist from further violence,’ and ‘urge[d] the United Nations Security Council to take such further action as may be necessary to protect civilians in Libya from attack, including the possible imposition of a no-fly zone over Libyan territory.’”<sup>26</sup> Action by “unanimous consent” suggests strong Senate approval for the resolution, but the legislative

<sup>22</sup> David A. Fahrenthold, “Obama’s Reasoning on Libya Criticized,” *Washington Post*, June 21, 2011, at A8.

<sup>23</sup> *Id.*

<sup>24</sup> March 21, 2011 letter, *supra* note 11, at 2.

<sup>25</sup> President Obama’s Letter About Efforts in Libya, May 20, 2011, sent to Senate and House leaders John A. Boehner, Nancy Pelosi, Harry Reid, and Mitch McConnell, at 1.

<sup>26</sup> OLC Opinion, *supra* note 16, at 2.

record provides no support for that impression. Even if there were evidence of strong involvement by Senators in drafting, debating, and adopting this language, a resolution passed by a single chamber contains no statutory support. In addition, passage of S. Res. 85 reveals little other than marginal involvement by a few Senators.

Resolution 7 of S. Res. 85 urged the Security Council “to take such further action as may be necessary to protect civilians in Libya from attack, including the possible imposition of a no-fly zone over Libyan territory.” When was the no-fly language added to the resolution? Were Senators adequately informed of this amendment? There is evidence that they were not. The legislative history of S. Res. 85 is sparse. There were no hearings and no committee report. The resolution was not referred to a particular committee. Sponsors of the resolution included ten Democrats (Bob Menendez, Frank Lautenberg, Dick Durbin, Kirsten Gillibrand, Bernie Sanders, Sheldon Whitehouse, Chuck Schumer, Bob Casey, Ron Wyden, and Benjamin Cardin) and one Republican (Mark Kirk).

There was no debate on S. Res. 85. There is no evidence of any Senator on the floor at that time other than Senator Schumer and the presiding officer. Schumer asked for unanimous consent to take up the resolution. No one objected, possibly because there was no one present to object. Senate “deliberation” took less than a minute. When one watches Senate action on C-SPAN, consideration of the resolution began at 4:13:44 and ended at 4:14:19 – after 35 seconds. On March 30, Senator John Ensign objected that S. Res. 85 “received the same amount of consideration that a bill to name a post office has. This legislation was hotlined.”<sup>27</sup> That is, Senate offices were notified by automated phone calls and e-mails of pending action on the resolution, often late in the evening when few Senators are present. According to some Senate aides, “almost no members knew about the no-fly zone language” that had been added to the resolution.<sup>28</sup> At 4:03 pm, through the hotlined procedure, Senate offices received S. Res. 85 with the no-fly zone provision but without flagging the significant change.<sup>29</sup> Senator Mike Lee noted: “Clearly, the process was abused. You don’t use a hotline to bait and switch the country into a military conflict.”<sup>30</sup> Senator Jeff Sessions remarked: “I am also not happy at the way some resolution was passed here that seemed to have authorized force in some way that nobody I know of in the Senate was aware that it was in the resolution when it passed.”<sup>31</sup>

## 7. The “Mandate” for Military Action in Libya

President Obama’s speech to the nation on March 28 stated that “the United States has not acted alone. Instead, we have been joined by a strong and growing coalition. This includes our closest allies – nations like the United Kingdom, France, Canada, Denmark, Norway, Italy, Spain, Greece, and Turkey – all of whom have fought by our side for decades. And it includes Arab partners like Qatar and the United Arab Emirates, who have chosen to meet their responsibilities to defend the Libyan people.” Over the month of March, “the United States has

<sup>27</sup> 157 Cong. Rec. S1952 (daily ed. March 30, 2011).

<sup>28</sup> Conn Carroll, “How the Senate was Bait and Switched into War,” <http://washingtonexaminer.com/print/blogs/beltway-confidential/2011/04-how-senate-was-bait-and-switched-war>.

<sup>29</sup> Id.

<sup>30</sup> Id.

<sup>31</sup> 157 Cong. Rec. S2010 (daily ed. March 31, 2011).

worked with our international partners to mobilize a broad coalition, secure an international mandate to protect civilians, stop an advancing army, prevent a massacre, and establish a no-fly zone with our allies and partners.”<sup>32</sup> Missing from this coalition and mandate was the institution of Congress. President Obama in this speech spoke of “a plea for help from the Libyan people themselves.”<sup>33</sup> He offered his support “for a set of universal rights, including the freedom for people to express themselves” and for governments “that are ultimately responsive to the aspirations of the people.”<sup>34</sup> Yet throughout this period there had been no effort by the President or his administration to listen to the American people or secure their support.

On May 20, in a letter to Congress, President Obama said that he acted militarily against Libya “pursuant to a request from the Arab League and authorization by the United Nations Security Council.” The administration’s June 15 submission to Congress claims that President Obama acted militarily in Libya “with a mandate from the United Nations.” There is only one permitted mandate under the U.S. Constitution for the use of military force against another nation that has not attacked or threatened the United States. That mandate must come from Congress.

Senate Joint Resolution 20, introduced on June 21, is designed to authorize the use of U.S. armed force in Libya. In two places the resolution uses the word “mandate.” Security Council Resolution 1970 “mandates international economic sanctions and an arms embargo.” Security Council Resolution 1973 “mandates ‘all necessary measures’ to protect civilians in Libya, implement a ‘no-fly zone’, and enforce an arms embargo against the Qaddafi regime.” The Security Council cannot mandate, order, or command the United States. Under the U.S. Constitution, mandates come from laws enacted by Congress.

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<sup>32</sup> Remarks by the President in Address to the Nation on Libya, March 28, 2011, at 2, *supra* note 13.

<sup>33</sup> *Id.* at 3.

<sup>34</sup> *Id.* at 4.



## BIOSKETCH FOR LOUIS FISHER

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His books include *President and Congress* (1972), *Presidential Spending Power* (1975), *The Constitution Between Friends* (1978), *The Politics of Shared Power* (4th ed. 1998), *Constitutional Conflicts Between Congress and the President* (5th ed. 2007), *Constitutional Dialogues* (1988), *American Constitutional Law* (with Katy J. Harriger, 9th ed. 2011), *Presidential War Power* (2d ed. 2004), *Political Dynamics of Constitutional Law* (with Neal Devins, 4th ed. 2006), *Congressional Abdication on War and Spending* (2000), *Religious Liberty in America: Political Safeguards* (2002), *Nazi Saboteurs on Trial: A Military Tribunal & American Law* (2003; 2d ed. 2005), *The Politics of Executive Privilege* (2004), *The Democratic Constitution* (with Neal Devins, 2004), *Military Tribunals and Presidential Power: American Revolution to the War on Terrorism* (2005), *In the Name of National Security: Unchecked Presidential Power and the Reynolds Case* (2006), *The Constitution and 9/11: Recurring Threats to America's Freedoms* (2008), *The Supreme Court and Congress: Rival Interpretations* (2009), *On Appreciating Congress: The People's Branch* (2010), and *Defending Congress and the Constitution* (2011). His textbook in constitutional law is available in two paperbacks: *Constitutional Structures: Separation of Powers and Federalism* and *Constitutional Rights: Civil Rights and Civil Liberties*. With Leonard W. Levy he edited the four-volume *Encyclopedia of the American Presidency* (1994). He has twice won the Louis Brownlow Book Award (for *Presidential Spending Power* and *Constitutional Dialogues*). The encyclopedia he co-edited was awarded the Dartmouth Medal. In 1995 he received the Aaron B. Wildavsky Award "For Lifetime Scholarly Achievement in Public Budgeting" from the Association for Budgeting and Financial Management. In 2006 he received the Neustadt Book Award for *Military Tribunals and Presidential Power*.

He received his doctorate in political science from the New School for Social Research (1967) and has taught at Queens College, Georgetown University, American University, Catholic University, Indiana University, Johns Hopkins University, the College of William and Mary law school, and the Catholic University law school.

Dr. Fisher has been invited to testify before Congress about 50 times on such issues as war powers, state secrets privilege, NSA surveillance, executive spending discretion, presidential reorganization authority, Congress and the Constitution, the legislative veto, the item veto, the Gramm-Rudman deficit control act, executive privilege, committee subpoenas, executive lobbying, CIA whistleblowing, covert spending, the pocket veto, recess appointments, the budget process, the balanced budget amendment, biennial budgeting, and presidential impoundment powers.

He has been active with CEELI (Central and East European Law Initiative) of the American Bar Association, traveling to Bulgaria, Albania, and Hungary to assist constitution-writers, participating in

CEELI conferences in Washington, D.C. with delegations from Bosnia-Herzegovina, Lithuania, Romania, and Russia, serving on CEELI “working groups” on Armenia and Belarus, and assisting in constitutional amendments for the Kyrgyz Republic. As part of CRS delegations he traveled to Russia and Ukraine to assist on constitutional questions. For the International Bar Association he helped analyze the draft constitutions for Swaziland and Zimbabwe.

Dr. Fisher’s specialties include constitutional law, war powers, budget policy, executive-legislative relations, and judicial-congressional relations. He is the author of more than 400 articles in law reviews, political science journals, encyclopedias, books, magazines, and newspapers. He has been invited to speak in Albania, Australia, Belgium, Bulgaria, Canada, China, the Czech Republic, Denmark, England, France, Germany, Greece, Israel, Japan, Macedonia, Malaysia, Mexico, the Netherlands, Oman, the Philippines, Poland, Romania, Russia, Slovenia, South Korea, Sweden, Taiwan, Ukraine, and the United Arab Emirates.