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Hon. John Warner
Chair, Committee on Armed Services
United States Senate
225 Russell Office Building
Washington, DC 20510

Hon. Carl Levin
Ranking Member, Committee on Armed Services
United States Senate
269 Russell Office Building
Washington, DC 20510

Re: Nomination of Robert M. Gates for Secretary of Defense

Dear Senators Warner and Levin:

We are writing on behalf of the Association of the Bar of the City of New York in connection with the upcoming hearings regarding the nomination of Hon. Robert M. Gates to be Secretary of Defense.

The Association is an independent non-governmental organization with a membership of more than 22,000 lawyers, judges, law professors and government officials, principally from New York City, but also from around the United States and from 50 other countries. Founded in 1870, the Association has a long history of engagement in issues of legal policy of concern to the profession and has been a continuous advocate of the rule of law at home and around the world. This Committee has a long record of involvement with national security issues, including the Uniform Code of Military Justice, as well as the many issues that have arisen since 9/11/2001.

The hearings concerning Mr. Gates' nomination are extremely important and provide the primary opportunity to obtain from Mr. Gates his views regarding the critical issues facing the Department of Defense. To assist you in these hearings, we have prepared, and set forth below, a list of suggested topics and questions which we believe may assist you in obtaining Mr. Gates' views on many important issues facing the Department, in advance of any vote on his nomination. As we understand and expect that the hearings will appropriately focus on the ongoing conflicts in Iraq and Afghanistan, we have attempted instead to highlight additional subjects and issues which could also provide insight into Mr. Gates' qualifications.

These topics and questions are, in no particular order:

- **Primary Threat.** What does Mr. Gates see as the primary threat to United States security, e.g., nuclear weapons, long-range missiles (nuclear, conventional or otherwise), loose nuclear weapons, acts of terrorism or something else?
- **Non-Military Threats.** Does Mr. Gates consider there to be any non-military threats to national security?
 - Many countries, including those in Europe and the littoral states of North Africa for example, consider the massive influx of legal and illegal immigrants to be a threat to their national security. What is Mr. Gates' view in this regard?
 - Does Mr. Gates consider changes to the natural environment, such as those that may result from global warming, a long-term threat to national security?
- **Strategy.** In the past, the United States has articulated force structure goals, e.g., forces sufficient to win a major regional conflict while holding another at bay long enough to swing the first set of forces to win the second (win-hold-win). Given Mr. Gates' view of the primary threat, what is his view with respect to the strategic doctrine necessary to combat such a threat?
- Likewise, what is Mr. Gates' opinion concerning the size and structure of the armed forces over the short and long term necessary to provide that strategic doctrine and meet that primary threat?
 - Does Mr. Gates agree with some recent testimony that the armed forces are stretched thin and are not now in a position to engage in a regional war, say, in the Korean Peninsula?
 - Should the United States re-institute the draft or some form of the draft?
- **Geneva Conventions.** What is Mr. Gates' opinion concerning the Geneva Conventions and their application to the global war on Terror?

- Are they “quaint,” as an Administration officer has suggested, and in need of reform?
- If so, what problems does he identify with the Conventions and what changes to them would he propose?
- **Detainees.** What is the Department’s plan with regard to detainees maintained at Guantanamo Bay and elsewhere, specifically with respect to those the Department does not intend to try pursuant to the Military Commissions Act?
- **JAGs**
 - What role does Mr. Gates contemplate for the JAGs in developing military commission rules of procedure? Would he intend the JAGs to be substantively involved in this process? If not, why not?
 - What is Mr. Gates’ opinion on the role of maintaining the JAGs’ ability to provide independent counsel?
 - Does Mr. Gates support giving the TJAGs a third star?
- **Intelligence**
 - What are Mr. Gates’ views on the organization and roles of the US intelligence services? Specifically, given the Director of National Intelligence’s primary position in the IC hierarchy and the Department of Defense’s control of most of the intelligence budget, how does he see the integration of the various parts of the intelligence community, if at all?
 - Would Mr. Gates retain the office, created under Mr. Rumsfeld, of Undersecretary of Defense for Intelligence?
 - Would Mr. Gates support streamlining Congressional oversight of intelligence and thereby removing a burden from his department by consolidating such oversight functions in the two select committees on intelligence?
 - Does Mr. have any views or plans with respect to the National Security Agency’s domestic surveillance programs?
- **Internal Oversight.** Currently, Congress has determined the Office of the Special Inspector General for Iraq Reconstruction will cease activities sometime in 2007. What is Mr. Gates’ opinion concerning closing this office?
- **Interagency Jointness.** One criticism in the 2006 Quadrennial Defense Review (“QDR”) has been that while the services have begun to work well together as contemplated by Goldwater-Nichols, the same cannot be said of

other government agencies that work *with* the Department to help it better achieve its mission. For example, the various military commands often do not integrate (or integrate it to varying degrees) their work with that, say, of the local embassy country teams or ambassadors, CIA station chiefs, USAID, or other sub-components of the State Department. It has been suggested that the lack of a single actor or agency controlling all US government assets in a region results in a loss of unity of focus and produces a disjointed US response to an otherwise agreed upon threat or situation. What is Mr. Gates' opinion on whether, and if yes, how, the Department can work to maximize inter-agency coordination to achieve a more focused approach to regional threats and issues? Relatedly, what are Mr. Gates' views on coordination with other cabinet level departments, particularly with respect to investigation and intelligence, as a means of relieving pressure on Defense Department assets?

- **Commands.**

- Does Mr. Gates believe a new unified command should be created for Africa?
- Does Mr. Gates share the view that it is appropriate for a military command, such as EuCom in Africa, to promote local economic development as a means of promoting regional stability?

- **Missile Defense.** Currently, the United States has missile silos that are "operational" in Alaska and California. However, as reported in the Wall Street Journal on November 28, 2006, one key component of that system, the SBX radar system, is still months away from arriving in Alaska and being integrated into the missile defense system. Why, in an era of tremendous demands on the defense budget, are we funding an "operational" system when major components to the system are not ready to be part of the "operational" system and still being tested?

- **Budget and Appropriations Procedure.**

- Twice this year - once for the authorization bill and again for the appropriations bill - the Senate adopted an amendment sponsored by Sen. Tom Coburn, R-Okla., to require a DOD spending bill report card making public details of all defense-related earmarks and the names of their sponsors. In addition, the Coburn provision required the Pentagon to assign a letter grade ranging from A to F for each earmark, with an F indicating the earmark was of little or no value to the nation's defense. A Senate-House conference committee removed the Coburn report card requirement during a closed-door meeting to iron out differences between the two chambers' Pentagon spending measures. Will Mr. Gates work with the Armed Services Committee to support the use of the public report card, or an equivalent reporting mechanism?

- **Space.**
 - What is Mr. Gates' view on the militarization of space? Should it be actively militarized, defensively militarized, utilized for look-down purposes only or be off limits?
 - In light of the GAO's report last month suggesting that spending on defense space-based programs has outpaced the development of technology, resulting in huge cost overruns, does Mr. Gates favor a re-evaluation of the Department's space technology programs and policies?
- **Domestic Involvement.** What is Mr. Gates' view with respect to utilizing the Department of Defense and its assets in connection with:
 - a) Domestic border control; and
 - b) Natural disasters?
 - How does he believe DOD performed in these areas and how can its performance be improved?
 - What is Mr. Gates' view of posse comitatus?
 - Does he believe it applies extra-territorially?

Mr. Gates has been nominated to the post of Secretary of Defense during a critical time for the nation. His nomination should be given the careful consideration that such an important position warrants. We raise these topics and questions with a view to a fair appraisal of Mr. Gates' qualifications and policy views in advance of any vote on the nomination. We take no position on this ultimate issue, but strongly believe that the above matters, and any others the Committee deems pertinent, should be fully explored and considered in evaluating Mr. Gates' nomination.

Very truly yours,

Michael Mernin

Michael Mernin

cc: Members, Senate Armed Services Committee