

Testimony of
Louis Fisher

April 17, 2002

Mr. Chairman, thank you for inviting me to testify on a most important issue: how Congress and the President commit the nation to war. Events of September 11 and the war against terrorism have brought this issue again into sharp focus. The Use of Force Act of September 18, 2001, authorized military action against the terrorist network involved in the terrorist attacks of September 11. In my judgment, however, military operations against countries other than Afghanistan can be appropriately initiated only with additional authorization from Congress. Moreover, whatever mechanisms are devised to improve consultation between the two branches will not satisfy the constitutional need for congressional authorization. The reasons for these conclusions are set forth below.

We debate the constitutionality of war power actions because of a rock-bottom belief held by the framers: It is possible to structure government in such a way to protect individual liberties and freedoms. We refer to this concept in different ways: separation of powers, checks and balances, pitting ambition against ambition. To the framers, it meant that the clash between institutions is the safest and best way of formulating national policy, whether domestic or foreign. The War Powers Resolution (WPR) relies on this same concept but uses different words: "collective judgment."

Collective Judgment

Section 2(a) of the WPR states that it is "the purpose of this joint resolution to fulfill the intent of the framers of the Constitution of the United States and insure that the collective judgment of both the Congress and the President will apply to the introduction of United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, and to the continued use of such forces in hostilities or in such situations." 87 Stat. 555, § 2(a) (1973).

Why the emphasis on "collective judgment"? Why not let the President initiate war without congressional authority? In 1787, the existing models of government throughout Europe, particularly in England, placed the war power and foreign affairs solely in the hands of the Executive. John Locke, in his Second Treatise on Civil Government (1690), placed the "federative" power (what we call foreign policy) with the Executive. Sir William Blackstone, in his Commentaries, defined the king's prerogative broadly to include the right to send and receive ambassadors, to make war or peace, to make treaties, to issue letters of marque and reprisal (authorizing private citizens to undertake military actions), and to raise and regulate fleets and armies.

The framers studied this monarchical model and repudiated it in its entirety. They placed Locke's federative powers and Blackstone's royal prerogatives either exclusively in Congress or as a

shared power between the Senate and the President (appointing ambassadors and making treaties). The rejection of the British model and monarchy could not have been more complete.

While the "original intent" of many constitutional provisions is debatable, there is no doubt about the framers' determination to vest in Congress the sole authority to take the country from a state of peace to a state of war. From 1789 to 1950, lawmakers, the courts, and the executive branch understood that only Congress could initiate offensive actions against other nations. As I will explain later, matters changed fundamentally in 1950 when President Harry Truman took the country to war in Korea without seeking congressional authority.

Admittedly, some scholars--particularly John Yoo--argue that the framers designed a system to "encourage presidential initiative in war" and that the Constitution's provisions "did not break with the tradition of their English, state, and revolutionary predecessors, but instead followed in their footsteps." This is not the place to analyze Yoo's work in detail, for that has been done elsewhere. Suffice it to say that had the framers adopted the English model, they wouldn't have written Articles I and II the way they did. Here it is unnecessary to debate the framers' intent. It is enough to look at the plain text of the Constitution. If the framers had indeed adopted "the traditional British approach to war powers," they would have written Article II to give the President the power to declare war, to issue letters of marque and reprisal, and to raise armies, along with other powers of external affairs that are reserved to Congress.

I won't repeat here the many statements of framers who believed that they had stripped the Executive of the power to take the country to war. At the Philadelphia convention, George Mason said he was "agst giving the power of war to the Executive, because not to be trusted with it. . . . He was for clogging rather than facilitating war." 2 Farrand 318-19. At the Pennsylvania ratifying convention, James Wilson expressed the prevailing sentiment that the system of checks and balances "will not hurry us into war; it is calculated to guard against it. It will not be in the power of a single man, or a single body of men, to involve us in such distress; for the important power of declaring war is vested in the legislature at large." 2 Elliot 528. The power of initiating war was vested in Congress. To the President was left certain defensive powers "to repel sudden attacks." 2 Farrand 318.

The framers gave Congress the power to initiate war because they believed that Presidents, in their search for fame and personal glory, would have too great an appetite for war. John Jay, generally supportive of executive power, warned in Federalist No. 4 that "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."

In studying history and politics, the framers came to fear the Executive's potential appetite for war. Has human nature changed in recent decades to permit us to trust independent presidential decisions in war? The historical record tells us that what Jay said in 1788 applies equally well to contemporary times.

Power of the Purse

John Yoo recognizes that Congress has the constitutional power to check presidential wars: It can withhold appropriations. Congress "could express its opposition to executive war decisions only by exercising its powers over funding and impeachment." The spending power, he writes, "may be the only means for legislative control over war." Constitutionally, this kind of analysis puts Congress in the back seat. Yoo allows Presidents to initiate wars and continue them until Congress is able to cut off funds. The advantage to the President is striking. Executive wars may persist so long as the President has one-third plus one in a single chamber to prevent Congress from overriding his veto of a funding-cutoff.

This general issue took real form in 1973 when Congress passed legislation to deny funds for the war in Southeast Asia. After President Nixon vetoed the bill, the House effort to override failed on a vote of 241 to 173, or 35 votes short of the necessary two-thirds majority. 119 Cong. Rec. 21778 (1973). A lawsuit filed by Representative Elizabeth Holtzman (D-N.Y.) asked the courts to determine that President Nixon could not engage in combat operations in Cambodia and elsewhere in Indochina in the absence of congressional authorization. District Judge Judd held that Congress had not authorized the bombing of Cambodia. Its inability to override the veto and the subsequent adoption of an August 15 deadline for the bombing could not be taken as an affirmative grant of legislative authority: "It cannot be the rule that the President needs a vote of only one-third plus one of either House in order to conduct a war, but this would be the consequence of holding that Congress must override a Presidential veto in order to terminate hostilities which it has not authorized." Appellate courts mooted the case because the August 15 compromise resolved the dispute between the two branches.

The Road to the War Powers Resolution

How have Presidents acquired so much independent power to take the country to war, contrary to what the framers intended? It may be tempting to say that the reason lies in the worldwide responsibilities that moved to the United States in the twentieth century. Yet the two greatest conflagrations--World Wars I and II--were both declared by Congress pursuant to the Constitution. Other conflicts, including Iraq in 1991 and the war against terrorism in 2001, were authorized by Congress.

In 1973, lawmakers decided that a statute was necessary to curb presidential wars and protect legislative prerogatives. What created the impetus for the War Powers Resolution? At the top of the list I would put the UN Charter and several mutual security pacts, particularly NATO. Although it was not the intent at the time, both treaties have in practice led to unilateral executive wars. Presidents sought authority not from Congress but from international and regional bodies. I have covered this development elsewhere, but will identify the main points here.

Truman in Korea, Bush in Iraq, Clinton in Haiti, Bosnia, and Kosovo--in each instance a President acted independently of Congress by relying either on the UN or NATO. Nothing in the history of the UN or NATO implies that Congress gave the President unilateral power to wage war. The legislative histories of those treaties show no such intent.

UN Charter

Those who drafted the UN Charter did so against the backdrop of the disaster of the Versailles Treaty and President Woodrow Wilson's determination to make international commitments without Congress. One of the "reservations" he objected to was by Senator Henry Cabot Lodge, who insisted on prohibiting the use of American troops by the League of Nations unless Congress, "which, under the Constitution, has the sole power to declare war or authorize the employment of the military or naval forces of the United States, shall by act or joint resolution so provide." 58 Cong. Rec. 8777 (1919).

Wilson opposed the Lodge reservations, claiming that they "cut out the heart of the Covenant" and represented "nullification" of the treaty. However, Wilson did not disagree with the substance of Lodge's language on the war power. In a letter to Senator Gilbert Monell Hitchcock on March 8, 1920, Wilson acknowledged the broad scope of congressional authority over the initiation of war: "There can be no objection to explaining again what our constitutional method is and that our Congress alone can declare war or determine the causes or occasions for war, and that it alone can authorize the use of the armed forces of the United States on land or on the sea. But to make such a declaration would certainly be a work of supererogation." In other words, Wilson objected to Lodge's language not because of its content but because it was superfluous. Both branches understood that congressional authorization was needed.

The rejection of the Versailles Treaty and Wilson's battle with Lodge remained part of the collective memory. In the meetings that led to the United Nations, the predominant view was that any commitment of U.S. forces to a world body needed prior authorization by both Houses of Congress. That attitude is reflected in the debates over the UN Charter, the UN Participation Act of 1945, and the 1949 amendments to the UN Participation Act.

During Senate debate on the UN Charter, President Truman sent a cable from Potsdam, stating that all agreements involving U.S. troop commitments to the UN would first have to be approved by both Houses of Congress. Without any equivocation he pledged: "When any such agreement or agreements are negotiated it will be my purpose to ask the Congress for appropriate legislation to approve them." 91 Cong. Rec. 8185 (1945). Backed by his reassurance, the Senate supported the UN Charter by a vote of 89 to 2. This understanding was later incorporated in the UN Participation Act of 1945. Without the slightest ambiguity, Section 6 states that the agreements "shall be subject to the approval of the Congress by appropriate act or joint resolution." 59 Stat. 621, § 6 (1945).

How was it possible for Truman, five years later, to send U.S. troops to Korea without seeking or obtaining congressional authority? His Administration claimed to be acting pursuant to UN authority. On June 29, 1950, Secretary of State Dean Acheson claimed that all U.S. actions taken in Korea "have been under the aegis of the United Nations." At a news conference, Truman agreed with a reporter's description of the war in Korea as "a police action under the United Nations." If this was a UN military action, how could Truman circumvent the clear language of the UN Participation Act? The answer: The Administration chose not to enter into a "special agreement." In fact, there has never been a special agreement. The very procedure enacted to protect legislative prerogatives became a nullity.

Mutual Security Pacts

In addition to citing the UN Charter and Security Council resolutions as grounds for using American troops in military operations, Presidents regard mutual security treaties as another source of authority. Treaties such as NATO and SEATO stipulate that provisions shall be "carried out by the Parties in accordance with their respective constitutional processes." Nothing in the legislative histories of these treaties suggests that the President has unilateral authority to act in the event of an attack. Military action by the United States would have to be consistent with "constitutional processes."

To argue that NATO and other mutual security treaties confer upon the President the authority to use military force without congressional approval would allow the President and the Senate, through the treaty process, to amend the Constitution by stripping the House of Representatives of its prerogatives over the use of military force. Scholars who examined NATO after its adoption concluded that the language about constitutional processes was "intended to ensure that the Executive Branch of the Government should come back to the Congress when decisions were required in which the Congress has a constitutional responsibility." The NATO treaty "does not transfer to the President the Congressional power to make war."

Senator Walter George said this about SEATO: "The treaty does not call for automatic action; it calls for consultation. If any course of action shall be agreed upon or decided upon, then that course of action must have the approval of Congress, because the constitutional process is provided for." 101 Cong. Rec. 1051 (1955). Nevertheless, the Lyndon Johnson Administration cited SEATO as one legal justification for the Vietnam War.

The War Powers Resolution attempted to limit the effect of mutual security treaties. Authority to introduce U.S. forces into hostilities shall not be inferred "from any treaty heretofore or hereafter ratified unless such treaty is implemented by legislation specifically authorizing" the introduction of American troops. 87 Stat. 558, § 8(a) (1973). The Senate Foreign Relations Committee explained that this provision ensured that both Houses of Congress "must be affirmatively involved in any decision of the United States to engage in hostilities pursuant to a treaty." S. Rept. No. 93-220, at 26 (1973). These understandings had zero impact on requiring congressional approval for the use of U.S. forces operating in conjunction with NATO in Bosnia and Kosovo.

Eisenhower's Model of Joint Action

President Dwight D. Eisenhower thought that Truman's initiative in Korea was a mistake, both constitutionally and politically. In 1954, when Eisenhower was pressured to intervene in Indochina, he told reporters at a news conference: "I will say this: there is going to be no involvement of America in war unless it is a result of the constitutional process that is placed upon Congress to declare it. Now, let us have that clear; and that is the answer."

His theory of government and international relations invited Congress to enact "area resolutions" to authorize presidential action in such troublespots as the Formosa Straits and the Middle East. He wanted other nations--friend and foe--to understand that Congress and the President were united in their foreign policy. His chief of staff, Sherman Adams, later recalled that Eisenhower was determined "not to resort to any kind of military action without the approval of Congress."

Eisenhower emphasized the importance of executive-legislative coordination when using military force: "I deem it necessary to seek the cooperation of the Congress. Only with that cooperation can we give the reassurance needed to deter aggression." Effective policy meant not unilateral decisions by the President but "joint action by the Congress and the Executive." In his memoirs, he explained the choice between invoking executive prerogatives and seeking congressional authority. On New Year's Day, in 1957, he met with Secretary of State Dulles and congressional leaders of both parties. House Majority Leader John McCormack (D-Mass.) asked Eisenhower whether he, as Commander in Chief, already possessed authority to carry out military actions in the Middle East without congressional action. Eisenhower replied that "greater effect could be had from a consensus of Executive and Legislative opinion. . . . Near the end of this meeting I reminded the legislators that the Constitution assumes that our two branches of government should get along together."

Kennedy and Johnson Initiatives

Unlike Eisenhower, President John F. Kennedy was prepared to act during the Cuban missile crisis solely on what he considered to be his constitutional authority. Instead of acting under a joint resolution, he claimed "full authority" as Commander in Chief. Congress did pass a Cuba Resolution, but the resolution did not authorize presidential action. It merely expressed the sentiments of Congress.

In August 1964, President Lyndon B. Johnson asked Congress to pass the Tonkin Gulf Resolution. The resolution, authorizing military action against North Vietnam, passed the House 416 to 0 and the Senate 88 to 2. Because of the speed with which Congress debated the resolution (acting over a two-day period) and controversies as to whether the second attack in the Tonkin Gulf actually occurred, many Members of Congress came to regret their votes and support a reassertion of legislative authority. Out of this activity came the National Commitments Resolution of 1969 and the War Powers Resolution of 1973.

National Commitments Resolution

Hearings by the Senate Foreign Relations Committee in 1967 highlighted its concern for a "marked constitutional imbalance" between Congress and the President in determining foreign policy over the past 25 years. Chairman J. William Fulbright said that the President "has acquired virtually unrestricted power to commit the United States abroad politically and militarily." 1969 CQ Almanac 946. Two years later the Senate passed a resolution to challenge the presidential power to commit the nation without first receiving congressional authorization.

The National Commitments Resolution marked a return to Eisenhower's philosophy of interbranch cooperation and joint action. Passing the Senate by a vote of 70 to 16, the resolution defined a national commitment as the use of U.S. armed forces on foreign territory or a promise to assist a foreign country by using U.S. armed forces or financial resources "either immediately or upon the happening of certain events." The resolution provides that "it is the sense of the Senate that a national commitment by the United States results only from affirmative action taken by the executive and legislative branches of the United States government by means of a treaty, statute, or concurrent resolution of both Houses specifically providing for such

commitment." 115 Cong. Rec. 17245 (1969). As a Senate resolution, it has no legal effect, but it represents an important expression of constitutional principles by a bipartisan Senate.

The War Powers Resolution

The stated purpose of the War Powers Resolution in Section 2(a) is "to fulfill the intent of the framers of the Constitution" and to "insure that the collective judgment" of Congress and the President will apply to the introduction of U.S. troops to combat. However, both in language and implementation, the resolution has been criticized for undermining the intent of the framers and failing to insure collective judgment.

Part of the controversy associated with the War Powers Resolution stems from the incompatible versions developed by the House and the Senate. The House was prepared to recognize that the President could use military force without prior authorization from Congress, at least for 120 days. Senators, unwilling to give the President such unilateral authority, attempted to spell out the particular conditions under which Presidents could act singlehandedly. Armed force could be used in three situations: (1) to repel an armed attack upon the United States, its territories and possessions, retaliate in the event of such an attack, and forestall the direct and imminent threat of such an attack; (2) to repel an armed attack against U.S. armed forces located outside the United States, and its territories and possessions, and forestall the direct and imminent threat of such an attack; and (3) to rescue endangered American citizens and nationals in foreign countries or at sea. The first situation (except for the final clause) conforms to understandings developed by the framers. The other situations reflect the changes that have occurred in the concept of defensive war and life-and-property actions.

Pressured to produce a bill, House and Senate conferees fashioned a compromise that ended up widening presidential power. Sections 4 and 5 allowed the President to act unilaterally with military force for 60 to 90 days. He could go to war at any time, in any place, for any reason. The resolution merely required the President to report to Congress on occasion and to consult with lawmakers "in every possible instance." It is difficult to see how the breadth of that power can be squared with the framers' intent.

When the bill came out of conference committee, some Members of Congress commented on the extent to which military power was tilted toward the President. Rep. William Green (D-Pa.), after supporting the resolution because it would limit presidential power, objected that it "is actually an expansion of Presidential warmaking power, rather than a limitation." 119 Cong. Rec. 36204 (1973). Rep. Vernon Thomson (R-Wis.) said that the "clear meaning" of the bill pointed to "a diminution rather than an enhancement of the role of Congress in the critical decisions whether the country will or will not go to war." *Id.* at 36207. To Rep. Bob Eckhardt (D-Tex.), the resolution provided "the color of authority to the President to exercise a warmaking power which I find the Constitution has exclusively assigned to the Congress." *Id.* at 36208.

Senator Tom Eagleton (D-Mo.), having been a principal sponsor of the resolution, denounced the version that emerged from conference. Although the media continued to describe the bill as a constraint on presidential war power, Eagleton said that the bill gave the President "unilateral authority to commit American troops anywhere in the world, under any conditions he decides, for 60 to 90 days." *Id.* at 36177.

Beyond these issues of statutory language, implementation further expanded presidential power because of a peculiar feature in the bill: the 60-90 day clock begins to tick only if the President reports under Section 4(a)(1). Not surprisingly, Presidents do not report under 4(a)(1). They report "consistent with" the WPR. The only President to report under 4(a)(1) was President Gerald Ford in the Mayaguez capture, but his report had no substantive importance because it was released after the operation was over. In its operation, the WPR allows Presidents to use military force against other countries until Congress adopts some kind of statutory constraint. Federal courts are a potential check, but thus far the judiciary has decided that war power cases lack standing, ripeness, or have other qualities that place them outside judicial scrutiny.

NATO's Military Operations

President Clinton twice relied on NATO to authorize military action, the first in Bosnia in 1994-95, and the second in Kosovo in 1999. On neither occasion did he seek authority from Congress, even though in 1993 he suggested that before using air power in Bosnia he might ask for "authority" or "agreement" from Congress. Toward the end of 1993, however, he repeatedly objected to legislative efforts to restrict his military options. His decision in 1994 to use air strikes against Serbian militias was taken without congressional authorization. Instead, the decision came in response to UN Security Council resolutions, operating through NATO's military command. He explained: "the authority under which air strikes can proceed, NATO acting out of area pursuant to U.N. authority, requires the common agreement of our NATO allies." In other words, he needed agreement from England, France, Italy, and other NATO allies, but not from Congress.

NATO air strikes began in February 1994 and continued into 1995. On September 1, 1995, President Clinton explained to congressional leaders the procedures used to order air strikes in Bosnia. The North Atlantic Council "approved" a number of measures and "agreed" that any direct attacks against remaining safe areas would justify air operations as determined "by the common judgment of NATO and U.N. military commanders." On September 12, he said the bombing attacks were "authorized by the United Nations."

In 1995, President Clinton ordered the deployment of 20,000 American ground troops to Bosnia without obtaining authority from Congress. He approved NATO's operation plan for sending ground troops to Bosnia (IFOR), and followed that with the successor plan, Stabilization Force (SFOR). He welcomed NATO's decision to approve the plan and the "Activation Order that will authorize the start of SFOR's mission." Authority would come from allies, not from Congress.

Actions in Bosnia combined Security Council resolutions and NATO. When President Clinton did not have UN support for military action in Kosovo, he relied entirely on NATO. At a news conference on October 8, 1998, he stated: "Yesterday I decided that the United States would vote to give NATO the authority to carry out military strikes against Serbia if President Milosevic continues to defy the international community." The decision to go to war against another country was in the hands of one person, exactly what the framers thought they had prevented. The war against Yugoslavia began on March 24, 1999.

Continued Military Action in Iraq

In June 1993, September 1996, and December 1998, President Clinton ordered military operations against Iraq. U.S. military strikes in Iraq continued from 1999 to the present day. There have been no legal analyses from the Administration to justify this use of force against Iraq, but it can be argued that when Congress passed the authorization bill in January 1991, it simultaneously sanctioned future military operations authorized by the UN Security Council. Such a claim can mean: (1) delegating the war power in perpetuity, and (2) surrendering congressional power to an international body.

Here are the specifics. On January 14, 1991, in P.L. 102-1, Congress authorized the use of U.S. armed force against Iraq. Congress authorized President George Bush to use armed force pursuant to UN Security Council resolution 678 (1990) "in order to achieve implementation of Security Council Resolutions 660, 661, 662, 664, 665, 666, 667, 669, 670, 674, and 677." This statute is usually interpreted as congressional authority to drive Iraq out of Kuwait, which was the purpose of resolution 678, adopted on November 29, 1990. All earlier resolutions set the stage for 678. Resolution 660, passed on August 2, 1990, condemned Iraq's invasion of Iraq and demanded immediate withdrawal. Resolution 661 imposed economic sanctions. Resolutions 662 to 677 reinforced resolutions 660 and 661 and added other restrictions.

How can one argue that Congress transferred its constitutional power to the Security Council? It depends on the interpretation of resolution 678, which authorized member states to use all necessary means "to uphold and implement 660 (1990) and all subsequent relevant resolutions and to restore international peace and security in the area." Could the phrase "all subsequent relevant resolutions" mean that whatever the Security Council promulgated after January 14, 1991, is automatically sanctioned by P.L. 102-1?

What is the meaning of subsequent? Any resolution issued after 678, or any resolution issued after 660 but before 678? It can be read either way. The most natural reading, in terms of the purpose of P.L. 102-1, is to refer to the resolutions from 660 to 678. The statutory objective was to oust Iraq from Kuwait. President Bush did not have authority to send ground troops north to Baghdad in an effort to remove Saddam Hussein. Such an operation would have exceeded his statutory authority and fractured the alliance that joined in support.

The broadest reading is to conclude that Congress, on January 14, 1991, transferred its constitutional powers to the Security Council, and that the future scope of American military commitments is determined by UN resolutions, not congressional statutes. From this theory, whatever the Security Council decided would apparently compel Congress to vote the necessary appropriations to cover the expenses of additional military actions. There is no evidence that Congress intended such a result, or could intend such a result.

The Use of Force Act (2001)

The joint resolution passed by Congress on September 18, 2001, authorized President George W. Bush to use all "necessary and appropriate force" against nations, organizations, or persons that he determines planned, authorized, committed, or aided the terrorist attacks of September 11, 2001, or harbored such organizations or persons, "in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons." 115

Stat. 224. No doubt the statute authorized military action against the terrorist structure in Afghanistan. Does it also authorize military operations against terrorist units in other countries?

There seems to be little constitutional objection to using U.S. forces to help train anti-terrorist organizations in other countries, such as the Philippines, Georgia, and Yemen. That kind of assistance does not represent war on those countries. U.S. troops are there at the invitation and request of the three nations.

Quite different is the use of military force against another country. That is especially so when force is used in a region that is so politically unstable that military conflict has the potential to spread beyond the target nation. The magnitude of another military operation involving a second or third country raises not merely practical but constitutional concerns, both in terms of (1) the legislative prerogative to take the country from a state of peace to a state of war, and (2) the legislative power of the purse. The principles announced by President Eisenhower and the National Commitments Resolution, calling for joint action by Congress and the President, are more than guides for good policy. They represent efforts to honor constitutional government.

The Value of Consultation

Policymaking by the federal government works better when the President and executive officials consult regularly with Members of Congress on domestic issues as well as matters of foreign affairs and national security. However, consultation is not a substitute for receiving congressional authority. Congress is a legislative body and discharges its constitutional duties by passing statutes that authorize and define national policy. Congress exists to legislate and legitimate, including military and financial commitments. Consultation is a technique for improving executive-legislative relations, but authority incorporated in a public law is the act that satisfies the Constitution.

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* (4th ed. 1997), *Constitutional Dialogues* (1988), *American Constitutional Law* (4th ed. 2001), *Presidential War Power* (1995), *Political Dynamics of Constitutional Law* (with Neal Devins, 3d ed. 2001), *Congressional Abdication on War and Spending* (2000), *Religious Liberty in America: Political Safeguards*

(2002), and *The Nazi Saboteur Case: Ex parte Quirin* (2003). 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, the encyclopedia he co-edited was awarded the Dartmouth Medal, and in 1995 he received the Aaron B. Wildavsky Award "For Lifetime Scholarly Achievement in Public Budgeting" from the Association for Budgeting and Financial Management.

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 on such issues as war powers, executive spending discretion, presidential reorganization authority, Congress and the Constitution, the legislative veto, the item veto, the Gramm-Rudman-Hollings Act, executive privilege, 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, and serving on CEELI "working groups" on Armenia and Belarus. As part of CRS delegations he traveled to Russia and Ukraine to assist on constitutional questions.

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 280 articles in law reviews, political science journals, encyclopedias, books, magazines, and newspapers. He has been invited to speak in Albania, Australia, Bulgaria, Canada, the Czech Republic, England, Germany, Greece, Holland, Israel, Macedonia, Malaysia, Mexico, Oman, the Philippines, Poland, Romania, Russia, Slovenia, Taiwan, Ukraine, and the United Arab Emirates.