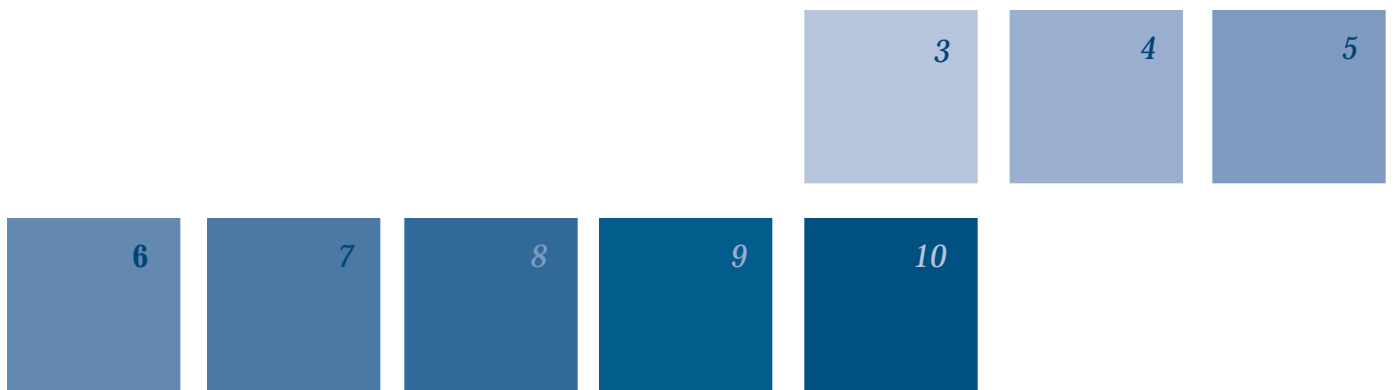


# The Week of Shame

*Congress Wilts as the President Demands an Unclogged Road to War*



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This essay is excerpted from a forthcoming book written by the author for the Center for Defense Information. The subject of that book is Congress and national security; the working title is "The Wastrels of Defense."

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**W**hile testifying to Congress in 1971 on the War Powers Act, a highly respected constitutional scholar, Alexander Bickel of Yale, told the Senate Foreign Relations Committee:

“When the Constitutional Convention was debating the allocation of the war power, George Mason of Virginia said he ‘was against giving the power of war to the executive, because [it is] not safely to be trusted with it; or to the Senate, because [it is] not so constructed as to be entitled to it.’ He was, he said, ‘for clogging rather than facilitating war; but for facilitating peace.’”<sup>1</sup>

Smart man, that Mason. On Oct. 10, 2002, if he listened to the preceding week of feeble debate in Congress on the question of war against Iraq, especially the Senate, Mason was surely clucking from above at the wisdom of his own words.

Congress’ vote on the aforementioned October day on legislation authorizing President George W. Bush to go to war against Iraq, and the talking that preceded it, explains two things: 1) what present-day members of Congress think about the authority they were assigned in the Constitution by George Mason and the other framers, and 2) what makes today’s members of Congress tick on national security issues. Because there is no more onerous question than making war against another nation, one would hope senators and representatives would give the issue their most profound consideration and rise above exploiting the issue to seek selfish political advantage. Indeed, even if the military exercise is to be the “cake walk” some prognosticators glibly predict,<sup>2</sup> war against Iraq will still hold awful consequences for the families and loved ones of military and civilian personnel who are to be killed or injured (both American and Iraqi). And, the ramifications for America’s role in the world, peace in the Middle East, the oil market and world economy, the ongoing war against terror, and the U.S. budget would all be extremely significant, even if there are no human casualties. The many members of Congress who said their vote on this issue was the most important they cast in their political careers were quite possibly correct.

## **OLD DEBATE STILL ALIVE AND WELL**

The discussion in the Senate and House on the legislation\* addressed not just whether the time had come to authorize

hostilities against Saddam Hussein, it also addressed the older question of just who held that power in the American system of government. The Nixonesque doctrine of inflated, self-contained commander in chief powers for the president was alive and well among an outspoken few. For example, Sen. John McCain, R-Ariz., argued Congress was ill-equipped to decide on hostilities and should leave the issue to the president:

“Congress cannot foresee the course of this conflict and should not unnecessarily constrain the options open to the president to defeat the threat we have identified in Saddam Hussein.”<sup>3</sup>

Some Democrats also saw it that way. John Kerry of Massachusetts, candidate for his party’s nomination for the 2004 presidential elections, argued:

“It [the legislation] authorizes the president to use armed forces to defend the ‘national security’ of the United States – a power ... he already has under the Constitution as commander in chief.”<sup>4</sup>

The same view was heard from the Republican members of the House International Relations Committee, who wrote in their committee report to accompany the House legislation to go to war:

“The committee believes that the president has authority under the Constitution to take action in order to deter and prevent acts of international terrorism against the United States.”<sup>5</sup>

The contrary view that it was the Congress that held the power to decide for or against war was, however, expressed by most members. Senator after senator and representative after representative, whether they ultimately voted for or against the legislation to go to war, referred to

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\* The legislation in both the House and the Senate came in the form of a “joint resolution,” which must pass both houses and which has the force of law once it is signed by the president. The House bill was House Joint Resolution 114; the Senate bill was Senate Joint Resolution 45. Both were passed in identical form on Thursday, Oct. 10. It was signed into law by Bush on Oct. 16.

Congress' authority to decide on war. Indeed, the legislation that ultimately passed the House and Senate stated that "the president is authorized to use the Armed Forces of the United States" against Iraq; it did not say, for example, "the Congress recognizes the president's authority to use the Armed Forces of the United States" or "the Congress supports the president's use of the Armed Forces of the United States." Most members of the House and Senate quite clearly recognized that the bill they were passing would have the unmistakable consequence of opening the door to war, and Bush would be constitutionally defective to open it on his own.

### **BUSH ARGUES FOR "WAR BY BUSH"**

The House and Senate held their deliberations on war against Iraq between Thursday, Oct. 3 and Thursday, Oct. 10, 2002. The circumstances surrounding this debate were historically unique and made the debate particularly revealing.

Before the debate began, Bush explained what he was asking for and why. In speeches before the United Nations on Sept. 12 and on national TV the night of Oct. 7, he described the threat posed by Iraq:

"Eleven years ago, as a condition for ending the Persian Gulf War, the Iraqi regime was required to destroy its weapons of mass destruction – to cease all development of such weapons – and to stop all support for terrorist groups. The Iraqi regime has violated all of those obligations. It possesses and produces chemical and biological weapons. It is seeking nuclear weapons. It has given shelter and support to terrorism, and practices terror against its own people ... .

Iraq's weapons of mass destruction are controlled by a murderous tyrant ... .

Iraq possesses ballistic missiles with a likely range of hundreds of miles ... .

Iraq has a growing fleet of manned and unmanned aerial vehicles that could be used to disperse chemical and biological weapons across broad areas. We are concerned that Iraq is exploring ways of using UAVs for missions targeting the United States ... . We know that Iraq and al Qaeda have had high level contacts that

go back a decade ... . Iraq has trained al Qaeda members in bomb making, poisons, and deadly gases ... . Iraq could decide on any given day to provide a biological or chemical weapon to a terrorist group or individual ... .

The evidence indicates that Iraq is reconstituting its nuclear weapons program ... .

Facing clear evidence of peril, we cannot wait for the final proof – the smoking gun – that could come in the form of a mushroom cloud."<sup>6</sup>

In the face of these offenses and threats, Bush did not propose that the United States immediately go to war. Instead, he made it clear he wanted first to attempt to resolve the issues peacefully:

"I hope this will not require military action ... . I have asked Congress to authorize the use of America's military, if it proves necessary, to enforce UN Security Council demands. Approving this resolution does not mean that military action is imminent or unavoidable."<sup>7</sup>

And, he made it clear he did not want the United States to have to act alone; he told the American public in his televised address, "... we will act with allies at our side ... ."<sup>8</sup> And, he told the UN General Assembly:

"My nation will work with the UN Security Council to meet our common challenge. If Iraq's regime defies us again, the world must move deliberately, decisively to hold Iraq to account. We will work with the UN Security Council for the necessary resolutions."<sup>9</sup>

While his emphasis was time and time again on acting through the United Nations and with allies should military force be necessary, he implied that if the United Nations failed to support him, he was prepared to use force against Iraq without UN support. He told the General Assembly:

"But the purposes of the United States should not be doubted. The Security Council resolu-

tions will be enforced – the just demands of peace and security will be met – or action will be unavoidable.”<sup>10</sup>

He also told the U.S. public on TV:

“Saddam Hussein has thumbed his nose at the world. He’s a threat to the neighborhood. He’s a threat to Israel. He’s a threat to the United States of America. And we’re just going to have to deal with him. And the best way to deal with him is for the world to rise up and say, you disarm, or we’ll disarm you. And if not – if, at the very end of the day, nothing happens – the United States, along with others, will act.”<sup>11</sup>

These statements left open important questions: Would the United States ultimately act with UN support, or not? How much time and patience was the president willing to give the United Nations? What allies would support the United States with their own forces? With the United Nations? Without the United Nations? In short, it was not clear if U.S. military force was to be used, under what circumstances, how much force was to be used, when, for how long, or to what end. All of these questions were unknown, if not to Bush, certainly to Congress, the American public, and the world.

Without any of these questions being resolved, Bush asked Congress to pass legislation authorizing war against Iraq. The text of the draft bill, as written in the White House, was abundantly clear on that point. After a series of rhetorical “whereas” clauses referring to various offenses by Iraq, including its violations of 15 UN resolutions, it read:

“The president is authorized to use all means that he determines to be appropriate, including force, in order to enforce the United Nations Security Council resolutions referenced above, defend the national security interests of the United States against the threat posed by Iraq, and restore international peace and security in the region.”<sup>12</sup>

The open-ended nature of the authority being requested was breathtaking:

- The president was to be permitted to use any means, including military force, not excluding nuclear weapons, as soon as and as long as he – and he alone – determined to be “appropriate.”
- The president, and the president alone, would determine what circumstances would prompt war, without any further discussions with Congress, the United Nations, allies, or even Mrs. Bush. The reasons could include 15 different UN Security Council resolutions, which addressed non-core issues, such as repatriating Kuwaiti prisoners, records, and property believed to remain in Iraq.
- If none of that was enough, the president was also authorized to go to war to “defend the national security interests” of the United States “against the threat posed by Iraq.” “National security interests” is not defined in the text, nor is “the threat posed by Iraq.” Both are left to the president to define.
- And if the above somehow did not provide a reason to go to war, the president was further authorized to go to war to “restore international peace and security in the region.” In other words, he was able to use force against anybody in the region as long as it was for restoring “peace and security,” as defined, of course, by the president. Thus, if Iraq were to disarm, return all prisoners and property, observe human rights, convert to democracy, and pose no other threat to U.S. national security interests, the president could still go to war against Iraq or anybody else if he found anything contrary to “international peace and security” in the Middle East.

The draft legislation threw open the door to war, utterly stripped of any of the conditions even the president said he would observe: the promises about using force only as a last resort, acting with UN support, and in concert with allies. It was unfettered presidential war pure and simple. He was requesting from Congress precisely what the framers of the Constitution sought to deny to the chief executive and to give exclusively to Congress: an open door to war, without the need to justify it to anyone when he deemed the time to have come. In all previous instances of a declaration of war, or any functional equivalent, America had already been attacked or the president had already decided to use force and was asking Congress to agree. Here,

there had been no such attack, and the president had made no such decision. This would be a first in American history, but only if Congress was willing to go along with it.

## **PRESIDENTIAL WAR, REAL POLITICS**

The president's historically unique request was nothing strange to the politicians in Washington. Some thought it was brilliant; some were furious, but they all understood. The president was changing the subject matter of the national political agenda in the run up to the 2002 elections for the House of Representatives and 34 seats in the Senate. As the *Washington Post* reported,

“Republicans believe they will benefit politically if candidates and the public are talking about the war on terrorism, a showdown with Hussein or new domestic security measures in the days leading to the Nov. 5 elections. Bush's political advisor, Karl Rove, has told donors and lawmakers that Republicans will have a better chance of picking up congressional seats this fall if they are talking about national defense.”<sup>13</sup>

The Democrats were furious. Usually, elections for Congress in the middle of a presidential term result in major gains for the party not in the White House. 2002 looked to be no exception. The economy was still pretty much in the tank. The stock market had sunk from a Dow-Jones index above 11,000 to less than 8,000. The federal budget had switched from surplus to deficit and was headed further south. And, the Democrats had big plans to bash Republicans for being cold and uncaring on subjects like Social Security and healthcare. All the normal signs pointed to the Democrats doing well in the upcoming elections. With any luck, they would take over the House of Representatives where the Republicans prevailed by only a few votes. And, they could increase their perilous one-vote majority in the Senate. They thought.

Bush started to openly exploit the situation in a fundraising speech in New Jersey on Sept. 24, when he alleged the Democrats were “not interested in the security of the American people.”<sup>14</sup> The next day, Senate Majority Leader Tom Daschle, D-S.D., sternly proclaimed himself outraged that the president called Democrats unpatriotic, but as the *Washington Post's* senior political commentator, David Broder, reported, many Democrats were even more furious that the subject of the national political debate was

being changed from Social Security, healthcare, the economy, and budget deficits to war and homeland security.<sup>15</sup>

The Democrats were angry, but they were also hog-tied. They and their favored political subjects never reclaimed center stage in the congressional elections. Thanks in large part to the president's changing the agenda and his active campaigning for his party in the elections, the Democrats won themselves a historic drubbing by losing, not gaining, seats in the House and losing control to a new Republican majority in the Senate. Bush's asking Congress to surrender its war-making authority and to permit a presidential war when he, and he alone, deemed the time to have come, was an integral part of that strategy. It was a political masterstroke: he won the elections and he received the wide open door authority he asked for. And, it all came from the very same George W. Bush that Democratic Party regulars reveled in calling an inarticulate dolt and that left-wing political cartoonists drew as an immature imbecile.

## **JUST REGULAR WAR AGAINST IRAQ WAS NOT ENOUGH**

On Sept. 20, 2002, the White House released a document titled “The National Security Strategy of the United States.” It was a report that is released each year by every White House (it's required by law), and previous examples were usually uncommonly good cures for insomnia. This one wasn't. It announced that a key component of the national security strategy of the United States would henceforth be pre-emption:

“We will disrupt and destroy terrorist organizations by ... identifying and destroying the threat before it reaches our borders ... . We will not hesitate to act alone, if necessary to exercise our right of self-defense by acting pre-emptively ... .”<sup>16</sup>

“We must be prepared to stop rogue states and their terrorist clients before they are able to threaten or use weapons of mass destruction against the United States and our allies and friends.”<sup>17</sup>

“For centuries, international law recognized that nations need not suffer an attack before they can lawfully take action to defend themselves against



forces that present an imminent danger of attack. Legal scholars and international jurists often conditioned the legitimacy of pre-emption on the existence of an imminent threat – most often a visible mobilization of armies, navies, and air forces preparing to attack.

We must adapt the concept of imminent threat to the capabilities and objectives of today's adversaries."<sup>18</sup>

"The major institutions of American national security were designed in a different era to meet different requirements. All of them must be transformed."<sup>19</sup>

Beyond just pre-emption, two elements of this new view on war against America's enemies are notable. First, the doctrine defines an imminent attack *not* as one that is just about to happen: an "imminent" attack is one for which the enemy has "capabilities" and that will achieve his "objectives." Put another way, an imminent attack could be years away; it might not even be planned. All that is required is that the enemy is capable of the attack and that an attack would meet his objectives; actual plans for an attack, let alone material preparations for one, are not needed.

Second, the United States should feel itself free to attack pre-emptively not just to protect itself; it might also attack to protect its interests, "our allies" and most notably "friends." Presidents used to argue they were free to go to war under certain security treaties, such as the NATO treaty. Now, legal structures were no longer needed; pre-emptive war was to be employed if an enemy threatened not just the United States or its treaty allies, but also "friends," who were to be identified, of course, by the president.

What higher tidemark of the doctrine of the "Imperial Presidency" can there be? We have here an assertion of unfettered power to attack even if no enemy attack is gathering and even if an attack that is planned is not against the United States but against some undefined "friend." The doctrine also added an element of arrogance not previously a palpable component to the Imperial Presidency, even under Richard Nixon, when it reigned supreme: The United States was reserving the right to attack when it saw some future threat in the making, even if others saw no such threat.

An earlier member of Congress foresaw this situation.

He said,

"Allow the president to invade a ... nation, whenever he shall deem it necessary to repel an invasion, and you allow him to do so whenever he may choose to say he deems it necessary for such purpose – and you allow him to make war at pleasure. Study to see if you can fix any limit to his power in this respect ... . If, today, he should choose to say he thinks it necessary to invade Canada ... . How could you stop him? You might say to him, 'I see no probability of [attack], ... but he will say to you 'be silent; I see it if you don't.' "<sup>20</sup>

Historians of the period recognize the quote: it was Rep. Abraham Lincoln arguing in opposition to war against Mexico in the 1840s. Concern about unchecked presidential power to go to war any time against any one for any reason is as valid today as it was over 150 years ago.

Although he did much to provoke the war against Mexico, President James K. Polk had a stronger justification for it than Bush claimed in October 2002 against Iraq: there was an actual attack from Mexico across the Rio Grande against U.S. forces before the declaration of war. In the case of Bush in 2002, he asserted no need for any attack by the enemy, or even a sign of one, before the United States invades. Moreover, major elements of Bush's own executive branch pointed out that the evidence he was presenting for pre-emptive war was weak.

## **CIA PRE-EMPTS PRE-EMPTION**

For an attack to be deemed "imminent," the president's pre-emption doctrine required the enemy to have a "capability" and "objectives" inimical to the United States, its interests, allies or friends. Based on his speeches, such a threat, even against the United States, seemed apparent from Saddam Hussein. However, in the summer and fall of 2002, leak after leak oozed out of U.S. and other intelligence agencies that questioned the accuracy of Bush's descriptions of Iraq's capabilities and objectives.

The president linked Iraq to al Qaeda and the attacks of Sept. 11, 2001, by telling the American public that a "very senior al Qaeda leader" had been in Iraq. There were also reports of a pre-Sept. 11 meeting between Iraqis and al Qaeda in the Czech Republic, and Secretary of Defense Donald Rumsfeld called the evidence of the link "bullet-

proof.”<sup>21</sup> However, working level intelligence analysts from both the CIA and from foreign intelligence agencies made it known to the U.S. and foreign press that these contacts were either transitory or non-existent.<sup>22</sup> Intelligence agencies found many substantial links between Saddam Hussein and terrorists, but not al Qaeda. Indeed, according to the *Wall Street Journal*, not exactly a left-wing screed,

“... Mr. Hussein has every reason to keep al Qaeda at arms’ length.

There is little evidence that [Saddam] has been willing so far to share his biological or chemical weapons with his partners in terror, even during the Gulf War ... .

The latest example [cited by the administration of Iraq-al Qaeda links] is the case of an al Qaeda operative named Abu Musab Zarqawi, who turned up in Baghdad last summer. The Central Intelligence Agency investigated and learned Mr. Zarqawi was in Baghdad at least partly for personal reasons: He had lost a leg during fighting in Afghanistan and was in the Iraqi capital seeking medical treatment in one of the few places he might escape capture ... . When the Iraqis were shown what one Jordanian intelligence official called ‘irrefutable proof’ that he was in Baghdad, the Iraqis agreed to investigate. Within days, Mr. Zarqawi was hustled out of Baghdad ... .

An intelligence report passed to the United States from officials in the Czech Republic said that one of the leaders of the Sept. 11 hijackers, Mohamed Atta, may have met with an Iraqi intelligence agent last year in Prague. But the meeting has never been verified and most analysts at the CIA doubt it happened, officials say ... .

An al Qaeda detainee being held at the Guantanamo naval base in Cuba told interrogators that Iraq may have trained some of the group’s members in the use of poisons and gases and in explosives. U.S. intelligence officials say it’s possible but they haven’t confirmed the report.”<sup>23</sup>

secret information presented by the CIA contradicted the public statements of the president and his administration. For example, the CIA made it known that aluminum tubes imported by Iraq were most probably not intended for any Iraqi nuclear program, as alleged by the advocates of war in the administration, and that Iraq was not months, but years, away from developing a nuclear weapon on its own.<sup>24</sup>

In an unclassified letter, the CIA informed the chairman of the Senate Intelligence Committee that “in the foreseeable future” the likelihood of any attack by Saddam Hussein on the United States was “low,” unless the United States attacked him first – in which case, the likelihood became “pretty high.”<sup>25</sup> In other words, if he chose war, the president was mostly likely to provoke what he said he sought to pre-empt.

The repeated leaks from the U.S. intelligence community that found the president’s and others’ evidence weak did bring a reaction. Reports began to appear of an effort from the Pentagon to fire CIA Director George Tenet and start a new intelligence operation under the control of the war advocates there. The reports were dutifully, but unconvincingly, denied by those same DoD officials who were reported to be the source of the retaliation against the CIA.<sup>26</sup>

But the CIA was not the war advocates’ only problem. Some of the evidence fell on its own face without a push from the CIA. An Iraqi unmanned aircraft drone (UAV) program was described to be able to deliver chemical or biological weapons. Regarding it, the president said, “We are concerned that Iraq is exploring ways of using UAVs for missions targeting the United States.”<sup>27</sup> The aircraft-drone described was analyzed by the press to be, in fact, physically incapable of reaching America from Iraq.<sup>28</sup> Even a plot, said to be engineered by Saddam, to assassinate President George H. W. Bush when he visited Kuwait in 1993 – noted by President George W. Bush when he said, “He tried to kill my dad” – may have been a hoax. A *New Yorker* article by investigative journalist Seymour Hersh, released in September 2002, argued that the alleged plot may have been a set up by Kuwait, in hopes of maintaining U.S. hostility to Iraq.<sup>29</sup> The administration failed to even address Hersh’s article or to provide evidence of its own contention. It is almost as if all that is needed to make an accusation against Saddam is to state it.

The assertions for war were anything but “bulletproof.” When advocating war in the absence of an actual attack, or even one that is detectably imminent, it is reasonable to expect some compelling evidence, rather than assertions that one’s own intelligence community refutes and the press

Congressional attendees at classified briefings stated that



finds outlandish. The point is not that the president's evidence was convincingly proved wrong; it was, however, shown to be questionable and open to legitimate debate. When the issue is going to war against another nation in the absence of an attack, one would hope for ironclad evidence, not the flimsy stuff presented up to October 2002, and subsequently.

Under our Constitution, we have protections against wars urged by presidents with weak evidence: Congress was provided by the framers with all the tools needed to apply the brakes when presidents, like Polk, see a threat that members of congress, such as Lincoln, fail to see. In October 2002, the 107<sup>th</sup> Congress got a little confused; it didn't apply the brakes; it stepped on the gas.

## **CONGRESS KOWTOWS TO THE IDOL OF PRE-EMPTIVE WAR**

When the Democratic leaders in Congress saw in September 2002 the breathtaking, unprecedented war-starting authority Bush was seeking, they knew they had a problem. They did not want to hurt their chances for winning control of Congress in the November elections by showing any daylight between themselves and the president on a national security question. But, they also knew they could hurt their relationship with their own political base, and all-important voter turn out in the elections, if they endorsed such a blatant blank check for Bush. They knew they had to appease their political base, but they also knew they had to keep themselves joined at the hip with Bush on the question of war: A tricky posture to assume, but one that skilled politicians know how to adopt.

The desired posture was achieved on Oct. 2. That day in a ceremony in the Rose Garden of the White House, Bush announced bipartisan agreement on revised legislation on the question of war with Iraq with congressional leaders from both parties. Standing beside him at the podium were Republican Speaker of the House Dennis Hastert and then-Senate Republican Leader Trent Lott. Also there was Democratic Leader of the House Richard Gephardt and Sen. Joe Lieberman, who while not a titular Democratic Party leader, was certainly a prime catch.\*

The new legislation was the product of masterful politics, if not draftsmanship. The insignificant, rhetorical "whereas" clauses in the front of the legislation were completely rewritten. Also, three new sections were added to the part that had legal bite: 1) Congress stated its support for efforts to work with the UN Security Council; 2) the president was required to report to Congress no later than

48 hours after he went to war with Iraq that diplomatic means weren't working and hostilities against Iraq would not impede the war against other terrorists, and 3) reports every 60 days, as already required by the War Powers Act and other laws, had to be submitted.

The key section of the draft legislation that opened the door to war had two alterations of note. First, the language still read that the president was "authorized to use the Armed Forces of the United States as he determines to be necessary and appropriate," but he could do so only to "defend the national security of the United States against the continuing threat posed by Iraq; and enforce all relevant United Nations Security Council resolutions regarding Iraq." Gone was the language that authorized the president to make war to "restore international peace and security in the region." Under this formulation, the president was still authorized to go to war against Iraq to enforce "all relevant" UN resolutions, such as those addressing Kuwaiti prisoners and property still in Iraq. But, he couldn't go to war against any one else in the Middle East whom he might deem to impede "international peace and security." An objective he was not seeking was withdrawn; the objective he was seeking was left completely intact.

The new language urged, but did not require, working through the United Nations and using peaceful means. Only reports were required on efforts to solve problems through diplomacy and to continue the war against al Qaeda terror. Any competent White House staffer could write those reports whenever they were required. The changes in the legislation were pure window dressing. The president had clearly retained every bit of freedom of action he could ever want.

Second, the new language added the word "continuing" to the phrase "threat from Iraq." With this revision, supporters of the new "compromise" legislation were openly conceding that the threat was both pre-existing and extant; it could thus be assumed to be "imminent" as defined by the new doctrine. The president had achieved not only endorsement of an open door to war, but also, arguably, of his new doctrine.

The changes were, however, just enough for the Democrats, such as Gephardt and Lieberman, to be able to say they obtained some concessions. The new text threw rheto-

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\* Daschle was prominently missing; he was undecided at that moment and had walked away from the ceremony as its principals gathered.

ric at the desirability of working through the United Nations and with allies. Gephardt, Lieberman and any who joined them could claim they had added this dimension to the president's policies. It was a dimension the president remained free under the text of the legislation, to totally discard if he cared to – and that he had already rhetorically embraced more than three weeks earlier when he spoke to the UN General Assembly. In reality, the Democratic leadership extracted no meaningful concession from the president's original draft resolution.

And, because each and every change in the legislation was accepted by the president (he would have been a fool not to), the Democrats remained joined at the hip with him against Saddam in the run up to the November mid-term elections. They got their cake, and they were eating it, too. In politics, that's pretty good. They thought. That cake must feel rather dry in their mouths today.

It was also just in time, the Senate debate was scheduled to start the next day.

### **CONGRESS' WEEK OF SHAME**

In the Senate, the debate took six business days from Thursday afternoon, Oct. 3, to the night of Thursday, Oct. 10. The House took just three days, from Tuesday, Oct. 8, to the afternoon of Thursday, Oct. 10.

In the House, there never is much real debating. If the rules were to permit the 435 members to talk as often and as long as they chose – as in the Senate – little would get done, none of it in a timely fashion. As a result, members are typically permitted just a few minutes to speak. Only the “floor managers,” appointed to shepherd the legislation for both sides of the debate to a vote on final passage, are normally permitted to speak more than once. Debates in the House are more like a series of speeches, alternating between those for and against the proposition at hand. It is unfortunate, but necessary if the House is to get much of anything done.

The Senate is quite different. With “only” 100 members and a tradition of full debate, most senators take great pride in the moniker “The World's Greatest Deliberative Body.” In the 1970s, before television cameras swiveled on the railings above the Senate Chamber, debates – with senators going back and forth, directing their remarks to the points made by their opponents – were typical. While members had notes, usually – but not always – prepared by staff, to assist them, they almost always spoke extemporaneously. Only on special occasions, such as a new senator's “maiden speech” or to explain especially long and

complicated legislation, would a member deliver his remarks from a staff-written speech, more or less verbatim. Any member who relied too much on prepared texts to make his or her points would not command the respect, or sometimes even attention, of the other members. Such senators, of which there were only a few in the 1970s, were derided by veteran staff, and presumably senators as well, as more like wind-up dolls too doltish to utter words not scripted by others.

But 30 years later, when the Senate started its deliberations on the legislation to go to war against Iraq, things had become very different. On the first day of the debate, Lott and Daschle, the leaders for both parties, made introductory remarks. They both were quite solemn. Lott stated, “I believe the Senate will, once again, show why it is called the greatest deliberative body.”<sup>30</sup> Daschle joined in, “I want very much for this debate to be respectful, to recognize our solemn obligation as senators to debate ... on issues of this import.”<sup>31</sup> Then, there was a vote on a procedural matter; then nothing happened. No debate, no talking, not even scripted speeches – nothing.

With no one wanting to talk about Iraq, the Senate quietly moved on to other legislation, an appropriations bill, and other miscellaneous statements about other things: on the 100<sup>th</sup> anniversary of the 4-H Club by Sen. Pete Domenici, R-N.M.; on the Future Farmers of America chapter in Caldwell County, Kentucky by Sen. Jim Bunning, R-Ky.; on the 100<sup>th</sup> anniversary of the city of Mountain View, Calif. by Sen. Barbara Boxer, D-Calif., and other trivia. At 6:25 p.m., the Senate finished for the day.

On Friday, Oct. 4, the Senate went into session at 9:30 a.m. and immediately after the morning prayer and pledge of allegiance, turned to the Iraq legislation. For a major debate like this, one would expect a senior member, such as the chairman of the Foreign Relations or Armed Services Committees, or the ranking Republican from either, to start things off. Instead, the day's debate was initiated by a junior senator, Bunning, who the day earlier speecha-fied on the Future Farmers of America. Shortly after that, the chairman of the Finance Committee, Sen. Max Baucus, D-Mont., spoke, but he didn't want to speak about Iraq; he spoke about a tax bill. Then, Sen. Tom Harkin, D-Iowa, spoke about an education bill; then Baucus spoke again, but this time about a Medicare bill; then Sen. Ron Wyden, D-Ore., on energy policy; then, Baucus, again, but now on a U.S.-Chile trade agreement; then, Sen. Chris Dodd, D-Conn., on election reform legislation, and so on. Throughout this, there were only three brief interruptions

when Sens. Carl Levin, D-Mich., John Warner, R-Va., and George Voinovich, R-Ohio, interrupted the parade of irrelevancies with statements about Iraq. That afternoon, Warner and Sen. Robert Byrd, D-W.Va., did talk at length on Iraq, but more on that later.

When the Senate resumed on Monday, Oct. 7, the senators resumed talking about Iraq, but they were not debating. Instead, there began a long series of senators coming to the chamber, delivering prepared remarks, and disappearing. *The Washington Post* observed of this performance, "... the 'debate' was actually a sequence of prepared speeches involving little give and take between lawmakers."<sup>32</sup> The *Post* was quite accurate.

There was an exception of a subject that popped up from time to time and was truly debated, sometimes quite hotly; it was the subject of who gets to speak when, and for how long. At several points, Sen. Harry Reid, D-Nev., who, as deputy majority leader for the Democrats, was trying to keep the parliamentary trains running, complained that senators were not showing up to speak when they were scheduled to do so. As one staffer wryly commented, it was like "trying to herd cats." At one point on Wednesday, Oct. 9, tempers began to get testy, and it took about half an hour just to decide who would talk next and about what.<sup>33</sup> By Thursday, more and more senators privately and openly expressed dismay that they were not being allowed time to deliver their prepared speeches when they wanted to. At one point, Sen. Joe Biden, D-Del., could be heard through his microphone calling how the debate had been arranged "ridiculous," but the remark was not printed in the *Congressional Record*.<sup>34</sup>

For the Republicans, McCain, one of the more outspoken proponents of war, was anxious to keep things moving. As he explained in the *Record*, all the parliamentary skids had been greased to have the legislation passed quickly and in the precise "compromise" form the White House and the congressional leadership in both the House and Senate had already agreed on. He was particularly anxious that no one collect the votes to change a single word of the legislation's text:

"We intentionally introduced [in the Senate] the exact same language [as was being debated and passed in the House] so that when the other body [the House] passes it and we pass it, it will be the exact same message. Modifying that agreement could reopen issues that otherwise have been resolved and would unnecessarily

slow down consideration of a resolution that the president has requested and made clear is an urgent priority for his administration."<sup>35</sup>

Staff and senators knew exactly the parliamentary situation McCain was describing. When the Senate and House pass different versions of the same legislation, even if just one word is changed, they must resolve those differences in a House-Senate "conference committee," consisting of the senior members of the committees that generated the legislation. Those conferences can take, hours, days, weeks, or sometimes months depending on the character of the differences between the two bodies and just how insistent the protagonists are.

If anything were changed in the Senate version of the Iraq legislation, such a conference could have been required, and that would have presented opportunities for obstruction. In the Senate, just appointing the Senate's conferees can be filibustered; in the conference, the Senate's Democrats would outnumber the Republicans thereby giving them an opportunity, should they choose to exploit it, to insist on real changes. When the conference is a done deal, the whole thing has to be debated, yet again, in both the House and Senate, with all the attendant opportunities for things to fall apart, or at least be filibustered and delayed yet again. McCain knew he wanted to avoid this labyrinth if at all possible.

By Thursday, McCain was clearly losing his patience. He talked about "invoking cloture" to kill off any chance of a filibuster. So anxious was McCain to be finished that he angrily objected when Sen. Mark Dayton, D-Ohio, asked to be allowed just 30 more seconds to finish his remarks.<sup>36</sup> It may have been good parliamentary tactics to rush things along for McCain's side of the issue, but to give speakers the "bum's rush" so America can go to war was not an uplifting moment for a body that calls itself "The World's Greatest Deliberative Body."

#### **A BRIEF, SHINING MOMENT ON THE ROAD TO WAR**

Interjected between the statements on the 4-H club, trade agreements, and the heated exchanges on who gets to speak when, there was a brief interlude when an actual debate on the issue of war with Iraq occurred. It was Oct. 4, and being a Friday, most senators had left town – as is the modern custom – for politicking in their home states or other business out of Washington. As a result, there were only a few senators around to carry on the deliberations. Luckily

for those who remember when the Senate chamber did provide a forum for real debates, the members in the chamber that Friday afternoon included long-timers Byrd and Warner. They actually debated. They went back and forth, disagreeing on both the policy the president had adopted and who in the American government had the authority to go to war. Warner, the senior Republican on the Senate Armed Services Committee and a “floor manager” for the legislation, said:

“... the president of the United States, as I read the Constitution, has the authority, at this very moment, to employ the men and women of our Armed Forces in the defense of our nation ... . We don’t have to pass this [legislation].”<sup>37</sup>

And later,

“... our Constitution has given this president and every president who has preceded him, and every president who will come after, the authority to utilize all the assets of our nation, principally the men and women of the Armed Forces, to secure our interests and protect our people.”<sup>38</sup>

85-year-old Byrd couldn’t disagree more; both the specific legislation supporting war and any supposition that the president had any authority to initiate war on his own were completely wrong:

“Here we are today: we have rubber spines, rubber legs, and we do not have backbones. This branch of government, under the Constitution, is the branch ... to declare war.

The framers were very wise when they determined that these two matters – the decision to go to war and the making of war – should be in two different places. The decision, the determination to declare war, should flow from this branch ... and the matter of making war should be in the hands of a unified commander, the commander in chief.

What are we doing? In my view, if we accept this resolution as it is written, we are saying both

of these vital functions would be placed in the hands of one man.”<sup>39</sup>

Byrd was also an effective showman. He would periodically pull a dog-eared copy of the Constitution from his vest pocket and read from it, his voice and his hands quivering from his apparent passion and his years. Later on, he would do the same, holding his family Bible.

These exchanges were a joy to watch. Real differences were being argued out by men who passionately, yet with dignity, stated their case. They treated each other with real respect. There were no cheap shots implying opponents of the president were not patriotic, or that his supporters were warmongers. Neither gave the other the bum’s rush or sought some minor tactical advantage by denying the other the opportunity to talk as long as he sought, but neither abused the privilege. It was about two hours of the kind of deliberation that gave meaning to Lott’s and Daschle’s high expectations.

Then, at the end of the day, Byrd and Warner expressed their respect for each other and shook hands and left the chamber. After this brief but uplifting interlude, it was back to business as usual.

### **SOME SENATORS DO READ WHAT THEY VOTE ON**

On Monday, Oct. 7, the Senate quickly brought itself back to what the *Washington Post* had described as a “sequence of prepared speeches.” On Tuesday, the House started its “debate” which was, as usual, also in the mode of prepared speeches *in seriatim*. While these addresses in the House and Senate were basically in a random order of who arrived when to read from his or her papers, a pattern did ultimately emerge. The speeches could be put into one of three categories:

- Senators and House members, mostly Republicans, supporting Bush on the question of war, who described accurately the legislation they were going to vote on;
- Senators and House members, mostly Democrats, opposing Bush on the question of war, who described accurately the legislation they were going to vote on; and
- Senators and House members saying they supported Bush on the question of war but who described the



legislation they were to vote on as something radically different from what was actually before them. These were both Republicans and Democrats.

As reproduced in the *Congressional Record* and as shown on C-SPAN TV, several members of the House and Senate were willing to make known their support for pre-emptive, unilateral war against Iraq if and when Bush decided to do so. For example, true-debater Warner explained the latitude he was willing to grant the president:

“The principal purposes [of this] resolution is to authorize our president to use that force if, and I repeat, if he deems it necessary to remove the threat of those weapons [of mass destruction] for the security of our nation and other nations.”

And that the force authorized was not limited:

“This resolution also authorizes the president to use all necessary means ... .”<sup>40</sup>

McCain understood and made it clear that the president’s pre-emption doctrine and the legislation did not require that there be a threat of imminent attack:

“Iraq today clearly does not meet the ... standard of threatening imminent, sudden, and direct attack upon the United States or our Armed Forces.”<sup>41</sup>

In the House, the Republican chairman of the International Relations Committee, Rep. Henry Hyde, R-Ohio, explained the potential for unilateralism:

“We have no choice but to act as a sovereign country prepared to defend ourselves with our friends and allies, if possible, but alone if necessary. There can be no safety if we condition our faith on the cooperation of others ... .”<sup>42</sup>

While they saw things differently, but no less patriotically, various opponents read the legislation the same way. His description of the legislation as a “rag” may have been unkind, but Byrd also said less heatedly:

“We are voting on this new Bush doctrine of pre-emptive strikes ... . This resolution, S. J. Res. 46, we are about to vote to put the imprimatur of the Congress on that doctrine. That is what the Bush administration wants us to do. They want Congress to put its stamp of approval on that Bush doctrine of pre-emptive strikes.”<sup>43</sup>

Sen. Ted Kennedy, D-Mass., made the same clear:

[We are] “effectively yielding the decision-making power of making war or peace – effectively unilaterally turning that over just to the decision of the president of the United States ... . The [legislation’s] language says they can take unilateral action without a Security Council mandate to defend against a threat posed by Iraq.”<sup>44</sup>

Some members, who had clearly read the legislation and who did not agree with it, sought to change it. Levin, the chairman of the Armed Services Committee, attempted to require that the president would only be authorized to use force if the UN Security Council authorized it, or failing that, only after a subsequent vote of Congress.<sup>45</sup> Recognizing that the legislation permitted unilateral action without UN support, Levin and his amendment presented one of the central issues very clearly:

“The issue that is in dispute is whether unilateral force should be authorized by Congress at this time ... whether we should authorize the president now to go it alone ... .”<sup>46</sup>

His amendment failed to pass.

Opponents in the House also recognized the pre-emptive unilateralism that was to be adopted and attempted to change it. Rep. John Spratt, D-N.C., offered, and failed with, an amendment much like Levin’s. Rep. Dennis Kucinich, D-Ohio, attempted, and failed, to send the legislation back to the International Relations Committee with instructions to rewrite the bill to require reports from the president on the likely costs and consequences.<sup>47</sup>

In short, there were a number on both sides of the de-



bate who read and understood the legislation permitted unilateral, pre-emptive hostilities against Iraq at some unknown point in the future. Both those who liked the idea and those who didn't agreed that Saddam represented a serious problem that had to be addressed, with force if it came to that, but the two sides were willing to grant the president authority to go to war only under different circumstances: whenever the president chose under conditions he alone selected; or only under circumstances that had not yet been realized, such as UN support or a clearer understanding of other issues, such as cost.

### NOT ALL SENATORS CAN READ

Others thought they had a better idea. There was a substantial category of members, in both the House and Senate, consisting of both Republicans and Democrats, who were squeamish about pre-emptive, unilateral war but were also skittish about permitting any political daylight between themselves and Bush on the issue of war with Iraq. Some members described this dilemma to the *Washington Post*:

"More than a dozen Democrats, who requested anonymity, have told the *Post* that many members who oppose the president's strategy to confront Iraq are going to nonetheless support it because they fear a backlash from voters. A top party strategist said every House Democrat who faces a tough reelection this fall plans to vote for the Bush resolution."<sup>48</sup>

And from Broder again in the *Washington Post*, who found:

"... a squad of embattled incumbents who do not want to impair their reelection prospects by challenging the president on his strength as commander in chief. Senators such as Max Cleland in Georgia and Tim Johnson in South Dakota and challengers such as Erskine Bowles in North Carolina and Alex Sanders in South Carolina want no daylight between themselves and Bush on the Iraq issue."<sup>49</sup>

Said another way, such senators, and candidates for the Senate, believed it more important that they be elected than the United States hesitate before going into a war they did

not support. The lives of the American soldiers and Iraqi civilians who would almost certainly be killed were less valuable, in these people's minds, than their own political skin. These oh-so-valuable politicians handled the "dilemma" they felt themselves in by voting in favor of the legislation, but by explaining their vote with words describing legislation that did not exist. They said they were voting only for acting through the United Nations and with allies, and that hostilities must be an act of last resort. They further said the legislation and their vote were in opposition to the doctrine of pre-emption, unilateralism, or unlimited presidential power. So blatant was the contradiction between these descriptions of the legislation and the actual text of the legislation that one Republican admonished his fellow senators that they needed to read the bill. Sen. Don Nickles, R-Okla., said:

"I heard some people debating this resolution as if they had not read it ... . I encourage my colleagues to read the resolution."<sup>50</sup>

The *Congressional Record* shows who these illiterate members are. They included Democrats, especially senior ones and several known to harbor presidential ambitions in 2004 and 2008, and also a few Republicans. Gephardt, perennial presidential hopeful and the then-Democratic leader in the House, explained his vote in favor of the bill thus:

"Exhausting all efforts at the [United Nations] is essential ... . We must do everything we can to get the [United Nations] to succeed ... . Completely bypassing the [United Nations] would set a dangerous precedent that would undoubtedly be used by other countries in the future to our and the world's detriment. It is too high a price to pay."<sup>51</sup>

Why then would he vote for, even be a co-author of, legislation that enables the president to ignore the United Nations?

He also said:

"This resolution also limits the scope and duration of the president's authority to use force."<sup>52</sup>

It does not. It throws verbiage at these ideas by requiring meaningless reports, but in the final analysis the authorization to use force against Iraq is unlimited.

Gephardt also said:

“In my view, [the legislation] is not an endorsement of an acceptance of the president’s new policy of pre-emption ... . But the acceptance of such a momentous change in policy must not be inferred from the language of this resolution.”<sup>53</sup>

By permitting the use of pre-emptive war, as specifically defined by the doctrine, the legislation cannot be understood as anything *but* an approval of the doctrine. What more cogent endorsement can there be? As one of the authors of the legislation, Gephardt had an opportunity to alter the text of legislation with just a fig leaf to declare the precedent of this war not to constitute congressional approval of the doctrine, but he failed to do even that. It was more convenient to just describe the resolution inaccurately.

The gap between rhetoric and reality was at least as wide in the “The World’s Greatest Deliberative Body.” One Democratic Party presidential candidate, Kerry, said:

“If we do wind up going to war with Iraq, it is imperative that we do so with others in the international community, unless there is a showing of a grave, imminent – and I emphasize ‘imminent’ – threat to this country which requires the president to respond in a way that protects our immediate national security interests ... .

Let there be no doubt or confusion about where we stand on this. I will support a multilateral effort to disarm [Saddam Hussein] by force, if we ever exhaust those other options ... but I will not support a unilateral U.S. war against Iraq unless that threat is imminent and the multilateral effort has not proven possible under any circumstances ... .

Nor is the grant of authority in this resolution acknowledgement that Congress accepts or agrees with the president’s new strategic doctrine of pre-emption. Just the opposite. This resolution clearly limits the authority given to the president to use force in Iraq and Iraq only.”<sup>54</sup>

One wonders if Kerry had read either the text of the legislation he was voting for or the White House’s document proclaiming the pre-emption doctrine, especially how it defined “imminent.” If Kerry had read these documents, one then wonders if, to him, words in print have any meaning other than what a U.S. senator wants to pretend they mean.

Daschle, Lieberman, and Sen. Hilary Clinton, D-N.Y., all made the same kind of statement.

Daschle:

“The president’s desire to wage war alone, without the support of our allies ... was wrong ... .”<sup>55</sup>

But the legislation he was voting for permitted the president “to wage war alone.” Daschle went on to argue for cooperation with the United Nations, and with allies, and to use force only as a last resort, all things the legislation rendered null and void as preconditions for war. He then concluded,

“If the administration attempts to use the authority in this resolution without doing the work that is required before and after military action in Iraq, the situation there and elsewhere can indeed get worse. We could see more turmoil in the Persian Gulf, not less. We could see more bloodshed in the Middle East, not less. Americans could find themselves more vulnerable to terrorist attacks, not less.”<sup>56</sup>

If one wants to require a president to do “the work before and after military action” to make a war palatable, why would one support legislation that requires no such thing?

Lieberman wrote in an oped to the *Wall Street Journal*:

“Our resolution does not give the president a blank check. It authorizes the use of U.S. military power only ‘to defend the national security of the United States against the continuing threat posed by Iraq’ and to ‘enforce all relevant United Nations Security Council Resolutions regarding Iraq.’”<sup>57</sup>

He failed to point out that the language he was pretending somehow limited the president was, in fact, a blank

check. He continued in this make-believe vein in the Senate Chamber:

“... the United States will not go it alone ... .

If we come to that moment where we have no other choice but war, then it is clear that we will have allies in good number at our side. That was one of the items we added to the resolution ... .”<sup>58</sup>

Lieberman was one of the authors of the legislation; he went to the White House to stand in front of the cameras with the president to endorse it. One wonders if he can read and understand legislation.

Clinton had the wishful thinking disease worse than most others:

“Today, Mr. President, we are asked whether to give the president of the United States authority to use force in Iraq should diplomatic efforts fail to dismantle Saddam Hussein’s chemical and biological weapons and his nuclear program ... .

Some people favor attacking Saddam Hussein now, with any allies we can muster ... . However this course is fraught with danger ... . If we were to attack Iraq now, alone or with few allies, it would set a precedent that could come back to haunt us ... a unilateral attack ... is not a good option ... .

I believe the best course is to go to the United Nations for a strong resolution ... .

I believe international support and legitimacy are critical ... .

My vote is not, however, a vote for any new doctrine of pre-emption or for unilateralism or for the arrogance of American power or purpose, all of which carry grave dangers for our nation, the rule of international law, and the peace and security of people throughout the world... .

So it is with conviction that I support this resolution as being in the best interests of our nation. A vote for it is not a vote to rush to war ... .”<sup>59</sup>

It is hard to imagine a more perfect contradiction between the text of the legislation and what Clinton said she was voting for and why. Life can apparently get a little weird in Clinton’s mind.

There were other Democrats pretending the legislation did not say what it said, including Cleland,<sup>60</sup> Ben Nelson of Nebraska,<sup>61</sup> Evan Bayh of Indiana,<sup>62</sup> Bill Nelson of Florida,<sup>63</sup> and Dodd.<sup>64</sup> There were also some Republicans, including Voinovich and Sen. Chuck Hagel of Nebraska, who said:

“A regional and international coalition is essential ... .

America must understand it cannot alone win a war against terrorism. It will require allies, friends, and partners ... .

If we do it right and lead through the [United Nations] in concert with our allies, we can set a new standard for American leadership and international cooperation.”<sup>65</sup>

Whoever taught these members of Congress to read did a lousy job; wherever these senators went to elementary school, they were obviously “left behind.”

## HE WHO HESITATES AND THEN GETS LOST

In reviewing the *Congressional Record* and listening to the C-SPAN TV telecast of the House and Senate “debates,” only one member seemed genuinely undecided about how he was going to vote. This was the chairman of the Senate Foreign Relations Committee, Biden. In his initial statements, he described the issues very well:

“The president said he has not decided whether or not we are going to go to war. He said it is his hope that it can be avoided. Yet, for the first time in the history of the United States of America ... the president of the United States is asking for the Congress to give him the equivalent of a declaration of war – to go to war – before the president has made up his mind.”<sup>66</sup>

He also clearly understood the new pre-emption doctrine:

“The president always has the right to act preemptively if we are in imminent danger. If they

are coming over the hill, he can respond; if missiles are on the way, he can respond. But that is not the way I hear it being used here. We are talking about pre-emption [without an actual imminent attack], as if we are adopting a policy. As [former Secretary of State] Dr. [Henry] Kissinger said before our committee, that will undo an agreement the Western world made in the early 1640s at the end of the religious wars in Europe, which said no country has a right to pre-emptively move against another country because they think they are going to be bad guys.”<sup>67</sup>

And, later, Biden expressed his concern that the legislation, in effect, permitted the use of the pre-emption doctrine and was, in fact, an endorsement of that doctrine:

“I find myself supporting this resolution but worried that supporting this resolution will get us into real trouble ... .

I hope we don't walk out of here ... and somebody six months from now or six years from now will say we have the right now to establish this new doctrine of pre-emption and go wherever we want anytime.”<sup>68</sup>

Biden, as chairman of the Foreign Relations Committee, was in a position to lead a serious effort to amend the resolution to bring it into conformance with his, and others,' views on acquiring UN support before the United States goes to war. However, he ultimately decided to do nothing, except to let the disease of saying one thing and casting a vote for something totally different wrack his brain with its virulent toxins.

Biden decided to attempt to change not a single word of the resolution but to describe it in ways very different from what he had been saying earlier. Among the last flurry of prepared speeches on the last day of the “debate,” he said:

“This is not a blank check for the use of force against Iraq for any reason. It is an authorization for the use of force, if necessary, to compel Iraq to disarm, as it promised after the Gulf War.”<sup>69</sup>

Incorrect: the resolution authorized the use of force against “the continuing threat posed by Iraq” as determined by the president. Saddam's weapons of mass destruction were one of those “continuing” threats, but under the text of the resolution the president had the clear right to invoke any threat he cared to, and if Biden were to say to the president, as did Lincoln in 1848, “I see no probability of [Saddam attacking] us,” Bush would be fully within his rights to say, “Be silent; I see it, if you don't.”

### **PROBING FOR THE BOTTOM OF THE GUTTER**

As we know, some Democrats felt they would be vulnerable if they voted their beliefs and opposed the war. Those who voted against their own thinking – and, therefore, deemed their own political skins supreme above all else – probably thought they had escaped war-related cheap shots from Republicans. They were wrong; they overestimated the ethics of their opponents. Some Republicans could not deny themselves the opportunity to engage in true gutter politics, even after the target Democrats had cast their vote for the president's war.

In what became a nationally reviled example, the Republican candidate for the Senate in Georgia, Rep. Saxby Chambliss, ran a television ad picturing Osama bin Laden while the narrator talked about the Democratic candidate, incumbent Cleland. Cleland voted for the war legislation, but he opposed Bush's position on federal personnel policies in a homeland security bill. Chambliss equated Cleland's support for federal hiring and firing rules in the new Homeland Security Agency to be equivalent to aiding bin Laden. These rules may favor sloth and bureaucratic clog, but to equate them to the wanton slaughter of innocents is the lowest imaginable form of belly-crawling I have seen in three decades of work for politicians. Just to make candidate Chambliss' slander even more disgusting, it should be noted that Cleland was a veteran of the Vietnam War, who lost both legs and an arm on the battlefield.

In an ad campaign that did not attract, but should have, the same level of national disgust, Republican candidate John Thune in South Dakota tried much the same thing by linking his Democratic opponent, Tim Johnson, to Saddam because Johnson voted against Bush's budget request for missile defense.

The voters in Georgia rewarded the proponent of these vile tactics with an electoral victory. One wonders how much lower the Republican candidates would have been willing to go if the Democratic candidates who ducked had voted against the president on the war. It is entirely pos-



sible that the Republicans had already hit the bottom of the gutter, and had the targets of these attacks stood up, steadfast, for their own convictions, they might have done better. At least one hopes so. In the case of Georgia, perhaps they'll hand out paper bags at the state border for the voters to put over their heads when they leave the state.

Of course, it was not just Republicans who crawled in the gutter on the question of war and security. In South Carolina, Democrat Alex Sanders slandered his Republican opponent, Lindsey Graham, for voting against the death penalty for terrorists, even though Sanders himself was an opponent of the death penalty. On Oct. 9, during the House consideration of the Iraq legislation, Democrat Rep. Pete Stark of California went beyond disagreeing with Bush and criticizing his policies, and engaged in a crude *ad hominem* attack: "Rich kids will not pay [for the war against Iraq]; their daddies will get them deferments as Big George did for George W."<sup>70</sup> This and other personal slurs earned Stark a reprimand from the presiding speaker of the House, which – while not unheard of – is pretty rare.<sup>71</sup>

In Congress, and elections for Congress, some in both parties make appalling behavior a bipartisan enterprise.

### SOME PEARLS AMONG SWINE

Beyond the bright spot of the real – and respectful – debate between Warner and Byrd on Friday, Oct. 4, there were some Democrats and Republicans in the House and Senate who rose above the baser instincts of their colleagues and voted against what conventional wisdom held was their political self interest. Democratic senators Richard Durbin of Illinois, Levin of Michigan, Jack Reed of Rhode Island, and Paul Wellstone of Minnesota all were up for election and, therefore, were potential targets for Chambliss-style gutter-sniping. These senators nonetheless voted against final passage of the Iraq legislation. Wellstone was particularly notable in this group. Durbin, Levin, and Reed were not facing serious challenges in their re-election bids; polling in early October made it clear their opposition was getting no traction with the electorate.<sup>72</sup> Wellstone was, instead, running behind his opponent and was clearly vulnerable. He probably expected his opponent to exploit, one way or another, his voting against the legislation, but he nonetheless did so. Wellstone and members of his family were killed in an airplane crash shortly after the Iraq vote when he had returned to Minnesota to campaign. Wellstone courageously stood alone as one senator who held on to and voted for his convictions on the Iraq legislation,

even when he knew it would hurt him politically. His death was not just a loss; it was a tragedy.

Also notable was Republican Sen. Lincoln Chaffee of Rhode Island. He was not up for re-election, but as the only Republican voting against the legislation in the Senate, he was not winning any new friends in the White House or among the Republican congressional leadership. The same is true of Republican Rep. Connie Morella of Maryland and Rep. Jim Leech, Iowa, and very few others, in the House. They voted against the war and the president. Morella and Leech were especially notable because they were in close races.\* Their districts were both politically liberal, and some might argue that their political advantage was to vote as they did. That may or may not be the case; however, it took some real guts to vote against a president in one's own party on an issue so important.

### CONCLUSION

Senators and their staff like to tell visitors to the Capitol building that the U.S. Senate is "The World's Greatest Deliberative Body." The Senate's own official website uses that moniker.<sup>73</sup> It is clearly a title that fits the senators own image of themselves. The reality is different. The moniker is a figment of their egos.

One is tempted to recoil from the behavior of some in today's Congress and to think that the advocates of inflated war powers for the presidency, like McCain, are right that the power to decide war should be seated with the president alone. However, Bush's exploitation of the war issue for political purposes in October 2002 amply demonstrates that the executive is just as capable as the Chamblisses in the congressional gutters to use an issue as terrible as war for partisan political advantage.

One is also tempted to declare a pox on all their houses and to judge the House, the Senate, and the president all unfit for treating serious questions in a statesmanlike manner. However, even if the U.S. constitutional system failed to produce a un-political result on the question of war with Iraq in October 2002, the failure was much more one of human nature than of the Constitution. There is reason for some hope based on the performance of a few Republicans and Democrats, but just a few, in today's Congress. Regardless of their position on this war, Americans should take pride in the likes of Warner, Byrd, Chaffee, Wellstone,

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\* To his credit, Morella's Democratic opponent, Maryland State Senator Chris Van Hollen, did not attempt to exploit her vote on the war.



and even McCain, who, while intemperate, made himself abundantly clear. There are others in the House, such as Morella, Leach, Spratt, and Kucinich. To the rest, we owe only the fare for a trip to the dustbin of history.

In 1787, George Mason of Virginia said he did not want to give the war power just to the president, or even to the Senate, which as originally designed was not to be popularly elected. He assumed that the more representative House would act as a brake. That turns out not to be the case today. Popular election carries with it no guarantee of statesmanlike conduct during or after election campaigns. It does, however, remain for the voters to, first, take notice, and second, remember. In a democracy, the electorate gets a government only as good as it deserves.

One would hope that Bush can yet find his way to the political high road, but it doesn't look like that is going to happen. On Jan. 22, 2003, it was reported that "The president considers this nation to be at war," a White House source says, "and, as such, considers any opposition to his policies to be no less than an act of treason."<sup>74</sup> If this report is true, the president might be kind enough to tell us. Perhaps he will at his State of the Union message on Jan. 28. He might also want to clarify whether the people being arrested for treason will be Iraqis for failing to kowtow to their president or Americans failing to bow to theirs. It would be helpful to the U.S. troops in the field; they'll need to know what, or who, they are fighting for.

## ENDNOTES

<sup>1</sup> *War Powers Legislation*, Hearings before the Committee on Foreign Relations, United States Senate, March 8, 9, 24, and 25, April 23 and 26, May 14, July 26 and 27 and Oct. 6, 1971, Statement of Alexander M. Bickel, Professor of Law, Yale University, p. 550.

<sup>2</sup> See comments of commentator Kenneth Adelman, by Howard LaFranchi, in "U.S. Seeks Right Equation to Topple Saddam," *The Christian Science Monitor*, March 1, 2002.

<sup>3</sup> *Congressional Record*, Oct. 8, 2002, p. S10070.

<sup>4</sup> *Congressional Record*, Oct. 9, 2002, p. S10173.

<sup>5</sup> "Authorization for Use of Military Force against Iraq Resolution of 2002," Report together with Dissenting Views to accompany H. J. Res. 114, Oct. 7, 2002, House Report 107-721, p. 8.

<sup>6</sup> Excerpts from "President Bush's Address on Iraq," *Washington Post*, Oct. 7, 2002.

<sup>7</sup> *Ibid.*, p. 4.

<sup>8</sup> *Ibid.*, p. 4.

<sup>9</sup> "President's Remarks at the United Nations General Assembly," Sept. 12, 2002, White House website at [www.whitehouse.gov/news/releases/2002/09/20020912-1](http://www.whitehouse.gov/news/releases/2002/09/20020912-1), p. 5.

<sup>10</sup> *Ibid.*, p. 5.

<sup>11</sup> "President Stresses Need for Strong Iraq Resolution," Excerpts from Oct. 1, 2002, presidential remarks following meeting with members of Congress, from White House website at [www.whitehouse.gov](http://www.whitehouse.gov), p. 1.

<sup>12</sup> "Text of Bush's Iraq Proposal," *Associated Press*, Sept. 19, 2002.

<sup>13</sup> "Daschle Angered by Bush Statement," *Washington Post*, Sept. 26, 2002.

<sup>14</sup> *Ibid.*

<sup>15</sup> David Broder, "Still Reeling from Vietnam," *Washington Post*, Oct. 9, 2002.

<sup>16</sup> "The National Security Strategy of the United States," Full Text: Bush's National Security Strategy, *The New York Times*, Sept. 20, 2002, p. 7.

<sup>17</sup> *Ibid.*, p. 13.

<sup>18</sup> *Ibid.*, p. 14.

<sup>19</sup> *Ibid.*, p. 26.

<sup>20</sup> As quoted in an 1848 admonition in connection with the Mexican-American War, from "War Powers," Report of the Senate Foreign Relations Committee to accompany S. 440, Senate Report 93-220, June 14, 1973, p. 29.

<sup>21</sup> Thom Shanker, "Rumsfeld Denies Rift Between Pentagon and CIA," *The New York Times*, Oct. 25, 2002.

<sup>22</sup> "Officials' Private Doubts on Iraq War," *Philadelphia Inquirer*, Oct. 8, 2002; "White House 'exaggerating Iraqi threat' Bush's televised address attacked by US intelligence," *The Guardian*, Oct. 9, 2002; "Allies Find No Links Between Iraq, Al Qaeda," *Los Angeles Times*, Nov. 4, 2002.

<sup>23</sup> David S. Cloud, "Bush's Efforts to Link Hussein to al Qaeda Lack Clear Evidence; US Intelligence Can't Confirm President's Claims, Despite His History with Other Terror Groups," *The Wall Street Journal*, Oct. 23, 2002.

<sup>24</sup> "Officials' Private Doubts on Iraq War," p. 2.

<sup>25</sup> Letter of John McLaughlin for George Tenet to Hon. Bob Graham, Chairman, Select Committee on Intelligence, U.S. Senate, Oct. 7, 2002.

<sup>26</sup> Bradley Graham and Dana Priest, "Pentagon Team Told to Seek Details of Iraq-al Qaeda Ties," *Washington Post*, Oct. 25, 2002; Thom Shanker, "Rumsfeld Denies Rift Exists between Pentagon and CIA," *The New York Times*, Oct. 24, 2002; Warren P. Strobel and Jonathan S. Landay, "Pentagon, CIA in Bitter Dispute on Iraq," *Philadelphia Inquirer*, Oct. 28, 2002.

<sup>27</sup> "For Bush, Facts Are Malleable," *The Washington Post*, Oct. 22, 2002.

<sup>28</sup> *Ibid.*

<sup>29</sup> Seymour M. Hersh, "A Case Not Closed," *The New Yorker*, Sept. 27, 2002.

<sup>30</sup> *Congressional Record*, Oct. 3, 2002, p. S9892.

<sup>31</sup> *Ibid.*, p. S9893.

<sup>32</sup> "Iraq Resolution Passes Test, Gains Support," *Washington Post*, Oct. 10, 2002.

<sup>33</sup> *Congressional Record*, Oct. 3, 2002, p. S10189-10191.

<sup>34</sup> The author heard the remark and located the point in the debate on page S10288 on Oct. 10 when it was made but was not able to find it in the *Congressional Record*.

<sup>35</sup> *Congressional Record*, Oct. 9, 2002, p. S10160.

<sup>36</sup> *Congressional Record*, Oct. 11, 2002, p. S10245.

<sup>37</sup> *Congressional Record*, Oct. 4, 2002, p. S9959.

<sup>38</sup> *Congressional Record*, Oct. 8, 2002, p. S10065.

<sup>39</sup> *Congressional Record*, Oct. 4, 2002, p. S9955.

<sup>40</sup> *Ibid.*, p. S9948.

<sup>41</sup> *Congressional Record*, Oct. 10, 2002, p. S10249.

<sup>42</sup> *Congressional Record*, Oct. 8, 2002, p. H7196.

<sup>43</sup> *Congressional Record*, Oct. 4, 2002, p. S9957.

<sup>44</sup> *Ibid.*, p. S9963.

<sup>45</sup> *Congressional Record*, Oct. 9, 2002, p. S10191.

<sup>46</sup> *Ibid.*, p. S10192.

<sup>47</sup> *Congressional Record*, Oct. 10, 2002, p. H7796-7799.

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58 *Congressional Record*, Oct. 8, 2002, p. S10104.  
59 *Congressional Record*, Oct. 11, 2002, pp. S10288-10290.  
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62 Ibid., p. 10065.  
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65 Ibid., pp. S10175-10176.  
66 *Congressional Record*, Oct. 9, 2002, p. S10183.  
67 Ibid., p. 10184.  
68 *Congressional Record*, Oct. 10, 2002, pp. S10249-10250.  
69 Ibid., p. S10290.  
70 *Congressional Record*, Oct. 9, 2002, p. H7333.  
71 Ibid., p. H7334.  
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