The Dishonest Pursuit of War

Remembering Downing Street

by Doug Bandow

President George W. Bush's recent attempt to generate public support for his Iraq policy comes as even more evidence emerges that the invasion of Iraq was a war of choice. His argument that we must persevere because Iraq has become "a central front in the war on terror" sounds like the man who kills his parents and then throws himself on the mercy of the court for being an orphan.

It has long been evident that leading White House officials desired war against Iraq well before September 11. Dick Cheney, Paul Wolfowitz, and others had pressed the Clinton administration for regime change. In 2002, then-NSC advisor Condoleezza Rice told Richard Haass, the State Department's policy chief, "that decision's been made." A CIA analyst concerned about the unreliability of the defector code-named Curveball was told by his supervisor that "the powers that be probably aren't terribly interested in whether Curveball knows what he's talking about."

Thus, the year-long debate in the United States and at the United Nations was mere Kabuki theater, irrelevant to the preordained result. The war never was in doubt.

This makes the Bush administration's lack of preparedness for the consequences of war particularly shocking. Having taken a year to plan the invasion, why did the President's aides not do a better job preparing for the aftermath?

Although the President's determination to go to war irrespective of Saddam Hussein's actual weapons capabilities has long been evident, any remaining doubt was eliminated by the so-called Downing Street Memo and related documents, which revealed both British attitudes and American policies.

Although Iraq was not involved in the terrorist attacks of September 11, an allegation contrary to fact became the excuse to turn preexisting desires into policy. British Foreign Secretary Jack Straw noted, in a memo dated March 25, 2002, that, "If 11 September had not happened, it is doubtful that the US would now be considering military action against Iraq."

On July 23, 2002, foreign-policy aide Matthew Rycroft wrote a memo for the British cabinet summarizing a briefing by Richard Dearlove, then head of MI-6, Britain's intelligence agency, for Prime Minister Tony Blair and other officials. Rycroft observed that "It seemed clear that Bush had made up his mind to take military action, even if the timing was not yet decided." At another point, Rycroft allowed: "Military action was now seen as inevitable."

Public debate obviously was pure pretense, since, Rycroft explained, "The NSC had no patience with the UN route, and no enthusiasm for publishing material on the Iraqi regime's record." Indeed, he added, Geoff Hoon, Britain's defence secretary, had reported "that the US had already begun 'spikes of activity' to put pressure on the regime." That was probably an understatement. The London *Times* recently reported that "The RAF and US aircraft doubled the rate at which they were dropping bombs on Iraq in 2002 in an attempt to provoke Saddam Hussein into giving the allies an excuse for war." In November 2002, Rear Adm. David Gove, then-deputy director of global operations for the Joint Chiefs of Staff, said that pilots of both nations were "essentially flying combat missions."

Alas, observed Rycroft, enthusiasm for war was not enough: "The Attorney-General said that the desire for regime change was not a legal base for military action." A Cabinet Office paper entitled "Conditions for Military Action," prepared on July 21, 2002, acknowledged that "Regime change per se is not a proper basis for military action under international law." Foreign Secretary Straw similarly wrote that "regime change per se is no justification for military action."

A separate options paper developed by the Overseas and Defence Secretariat on March 8, 2002, noted that no legal justification for war "currently exists. This makes moving quickly to invade legally very difficult."

Washington, observed the anonymous memo writer, believed a legal justification to exist. But what? "[T]here is no justification for action against Iraq based on action in self-defence." To the contrary, observed Peter Ricketts, then-political director of the Foreign Office, in a memo dated March 22, 2002, "It sounds like a grudge match between Bush and Saddam."

Rycroft reports that the United States believed that the goal of removing Hussein from power was "justified by the conjunction of terrorism and WMD." But "The case was thin. Saddam was not threatening his neighbours, and his WMD capability was less than that of Libya, North Korea or Iran."

On March 18, 2002, Britain's ambassador Christopher Meyer lunched with Paul Wolfowitz, who, he reported to Downing Street, "thought it indispensable to spell out in detail Saddam's barbarism." But, Meyer noted, that was not enough for war. Moreover, he continued, Wolfowitz thought "it was absurd to deny the link between terrorism and Saddam." Yet Wolfowitz himself seemed to repudiate that position the following year when he allowed that even the Bush administration was divided over the issue.

The options paper also stated that "Saddam has not succeeded in seriously threatening his neighbours." And, it added, "there is no recent evidence of Iraq[i] complicity with international terrorism."

Ricketts made similar points: The "US scrambling to estab-

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lish a link between Iraq and Al Qaida is so far frankly unconvincing." Moreover, "the pace of Saddam Hussein's WMD programmes" had not changed since September 11. Nor, said the options paper, was there any "greater threat now that he [Hussein] will use WMD than there has been in recent years, so continuing containment is an option."

Still, observed Ricketts, it was "necessary to create the conditions" that would make an invasion legal. So Washington came up with an ingenious solution. According to Rycroft, "the intelligence and facts were being fixed around the policy."

This was eight months before the United States, aided primarily by Great Britain, invaded Iraq.

Several strategies were invoked, including a push to reintroduce U.N. weapons inspectors to provide a pretext for war. The Cabinet Office paper observed that "an ultimatum for the return of UN weapons inspectors to Iraq" might help create "the conditions necessary to justify government military action." Indeed, the writer later noted, "It is just possible that an ultimatum could be cast in terms which Saddam would reject." Foreign Secretary Straw added: "I believe that a demand for the unfettered readmission of weapons inspectors is essential, in terms of public explanation, and in terms of legal sanction for any subsequent military action."

Yet the legally minded British worried that the Bush administration might carelessly provoke Baghdad into war. The Cabinet Office memo feared that military action could be "precipitated in an unplanned way by, for example, an incident in the No Fly Zones," in which Washington had been aggressively bombing—the "spikes of activity" noted earlier.

The significance of Rycroft's Downing Street Memo has been dismissed by some, including Michael Kinsley of the *Los Angeles Times* and Tim Cavanaugh of *Reason*. After all, much of its contents are hearsay, and it only tells us what we already knew. The Bush administration has largely ignored its existence, while Tony Blair has pointed to the fact that the Bush administration ultimately went to the United Nations—even though Washington always indicated that it would act irrespective of what the U.N. Security Council decided.

Taken together, however, the memos paint a far different picture than that presented by George W. Bush to the American public. The documents discredit the President's disingenuous claim that military action would be a last resort. Indeed, in his speech before invading, the President said: "We are doing everything we can to avoid war in Iraq"—which was a blatant, shameful falsehood. The Bush administration's elaborate show, put on with great fanfare at home and before the United Nations in early 2003, alleging Baghdad's terrorist connections and WMD programs, was just that. (Prime Minister Tony Blair looks no more honest: "[A]ll the way through that period of time, we were trying to look for a way of managing to resolve this without conflict," he responded when asked about the Downing Street Memo. "The decision was not already taken.")

In fact, the Iraq war was a matter of choice, not necessity. And the Bush administration's goal was never disarmament. It intended to overthrow Saddam Hussein irrespective of any diplomatic initiative, the reintroduction of U.N. inspectors, or Hussein's compliance with any U.N. resolutions.

Perhaps most tragically, the memos forctold the catastrophic mismanagement of the so-called peace. Rycroft noted that "There was little discussion in Washington of the aftermath after military action." David Manning, then Blair's chief foreign-policy aide, wrote the prime minister on March 14, 2002, advocating that Blair should "not budge either in your insistence that, if we pursued regime change, it must be very carefully done and produce the right result."

The options paper stated that "The greater investment of Western forces, the greater our control over Iraq's future, but the greater the cost and the longer we would need to stay." Foreign Secretary Straw worried that the United States had not answered "how there can be any certainty that the replacement regime will be better." After all, he added, "Iraq has had NO history of democracy so no-one has this habit or experience."

White House spokesman David Almacy has tartly responded to the memos, claiming that "There was significant post war planning." That claim, if true, is even more damning, given the actual consequences. Nonetheless, evidence of serious planning is in short supply. After looting swept occupied Baghdad, Defense Secretary Donald Rumsfeld said simply, "Stuff happens."

Although Iraq was not involved in the attacks of September 11, an allegation contrary to fact became the excuse to turn preexisting desires into policy. British Foreign Secretary Jack Straw noted that, "If 11 September had not happened, it is doubtful that the US would now be considering military action against Iraq."

However mistaken the U.S. government's decision to invade, finding an acceptable exit will be difficult. Concerning Bill Clinton's war in Kosovo, then-candidate George W. Bush observed that "Victory means exit strategy." Now, however, he believes that America must remain entangled for years. What Press Secretary Scott McClellan calls the administration's "strategy for success" just looks like more of the same.

As the administration calls upon the rest of us for support, it is paying a price for its previous deceits. By an amazing 49-to-44-percent plurality, Americans blame President Bush more than they blame Hussein for the war. And 60 percent of Americans want to withdraw at least some U.S. troops—with only one third willing to wait until a stable government is formed. Unfortunately, there is ample reason to distrust the President. The promises he and his officials make in the future will be no easier to believe.

The Lone Ranger's Legacy

Chief Justice William Rehnquist, R.I.P.

by William J. Watkins, Jr.

After serving for more than three decades on the U.S. Supreme Court, Chief Justice William Rehnquist died on Saturday, September 3, at the age of 80, having lost his battle with thyroid cancer. With Justice Sandra Day O'Connor's recent announcement of her retirement, there are now two vacant seats on the Court. Just over a day after Rehnquist's death, President Bush announced his nomination of Judge John Roberts (whom he had formerly nominated to replace Justice O'Connor) as the next chief justice. As the Bush White House prepares for nasty confirmation fights, pundits and scholars are reflecting on Rehnquist's legacy.

Although the Rehnquist Court has left its imprint on criminal law, affirmative action, and a host of other areas, it will forever be associated with federalism. Chief Justice Rehnquist's enemies on the left accuse him of leading a constitutional revolution that curtailed the powers of Congress. The enervated Articles of Confederation, we are told, have replaced the Constitution of 1787.

His critics on the right complain that the federalism revolution is better described as an unsuccessful skirmish. They also take umbrage at Rehnquist's constitutional "flexibility," which he exhibited in *Dickerson* v. *United States* (2000), in which he affirmed that police officers must read suspects their *Miranda* rights. Rehnquist had been a harsh critic of the Warren Court's *Miranda* decision, but he upheld it because the warnings had "become a part of our national culture"—hardly sound justification grounded in the text and history of the Constitution.

President Nixon appointed Rehnquist to the Supreme Court in 1972. He became a member of the "Nixon Four," along with Justices Warren Burger, Harry Blackmun, and Lewis Powell. Today, such a bloc would be described as "centrist." In the wake of the Warren Court's jurisprudence, these justices were "conservative" and a threat to the new rules of constitutional law established in the 1950's and 60's.

Rehnquist had observed the beginnings of the Warren Court when he clerked for Justice Robert Jackson in the early 1950's. In 1957, Rehnquist wrote a scathing article for *U.S. News and World Report* criticizing his co-clerks for their "extreme solicitude for the claims of Communists and other criminal defendants, expansion of federal power at the expense of State power, great sympathy toward any governmental regulation of business—in short, the political philosophy now espoused by the Court under Chief Justice Warren."

In the months following his appointment to the Supreme Court, Rehnquist proved himself to be the most conservative of the Nixon Four and earned the "Lone Ranger" moniker. In those early years, he often found himself alone when articulating the conservative position on various legal issues. Though new to the Court, Rehnquist distinguished himself through well-reasoned dissenting opinions. His dissent from Harry Blackmun's majority opinion in *Roe* v. *Wade* (1973) has become a classic indictment of judicial activism:

> The decision here to break the term of pregnancy into three distinct terms and to outline the permissible restrictions the State may impose in each one . . . partakes more of judicial legislation than it does of a determination of the intent of the drafters of the 14th Amendment. The fact that a majority of the [states] have had restrictions on abortions for at least a century is a strong indication, it seems to me, that the asserted right to an abortion is not "so rooted in the traditions and conscience of our people to be ranked as fundamental."

Rehnquist's dissent in *Roe* was but a taste of things to come. Three years later, Rehnquist authored the first modern Supreme Court opinion to limit Congress's authority under the Constitution's Commerce Clause. In *National League of Cities* v. *Usery* (1976), the Court confronted congressional extension of the Fair Labor Standards Act's minimum-wage and maximum-hour requirements to employees of state and local governments. Writing for a 5-4 majority, Rehnquist held that the law would "impermissibly interfere [with] integral governmental functions" and that it would "significantly alter or displace the States' abilities to structure employer-employee relationships." At base, the opinion in *National League of Cities* recognized the sovereignty of the states and sought to interpose to restore some balance to federal-state relations. It would be the first shot fired in the so-called federalism revolution.

To Rehnquist's disappointment, the controversial *National League of Cities* decision did not last a decade. In *Garcia* v. *San Antonio Metropolitan Transit Authority* (1985), Justice Blackmun, who had joined Rehnquist's opinion in *National League of Cities*, jumped ship and delivered a majority opinion overruling Rehnquist's handiwork. The *Garcia* majority thought *National League of Cities* unworkable and held that the Framers intended the states to look to the political process—not to the courts—for protection of their reserved powers. Blackmun recognized that, with direct election of senators, the states no longer had representatives in Congress (*viz.*, they were no longer participants in the political process). Despite acknowledging the infirmity in his reasoning, Blackmun could not articulate an alternative option for state self-defense.

Shortly after the *Garcia* decision, President Reagan appointed Rehnquist chief justice of the Supreme Court. The Senate confirmation process turned ugly with allegations of harassing

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