

MEMORANDUM

To: Rep. John Conyers, Jr.
From: John C. Bonifaz¹
Date: May 23, 2005
RE: The President's Impeachable Offenses

The recent release of the Downing Street Memo provides new and compelling evidence that the President of the United States has been actively engaged in a conspiracy to deceive and mislead the United States Congress and the American people about the basis for going to war against Iraq. If true, such conduct constitutes a High Crime under Article II, Section 4 of the United States Constitution: "The President, Vice President, and all civil officers of the United States shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors."

In light of the emergence of the Downing Street Memo, Members of Congress should introduce a Resolution of Inquiry directing the House Judiciary Committee to launch a formal investigation into whether sufficient grounds exist for the House of Representatives to exercise its constitutional power to impeach George W. Bush, President of the United States.

The Downing Street Memo

On May 1, 2005, The Sunday Times of London published the Downing Street Memo. The document, marked "Secret and strictly personal – UK eyes only," consists of the official minutes of a briefing by Richard Dearlove, then-director of Britain's CIA equivalent, MI-6, to British Prime Minister Tony Blair and his top national security officials. Dearlove, having just returned from meetings with high U.S. Government officials in Washington, reported to Blair and members of his Cabinet on the Bush administration's plans to start a preemptive war against Iraq.

The briefing occurred on July 23, 2002, months before President Bush submitted his resolution on Iraq to the United States Congress and months before Bush and Blair asked the United Nations to resume its inspections for alleged weapons of mass destruction in Iraq.

The document reveals that, by the summer of 2002, President Bush had decided to overthrow Iraqi President Saddam Hussein by launching a war which, Dearlove reports, would be "justified by the conjunction of terrorism and WMD [weapons of mass destruction]." Dearlove continues: "But the intelligence and facts were being fixed around the policy." Dearlove also states that "[t]here was little discussion in Washington of the aftermath after military action."

¹ The writer is an attorney in Boston specializing in constitutional litigation. In February and March 2003, John C. Bonifaz served as lead counsel for a coalition of United States soldiers, parents of U.S. soldiers, and Members of Congress (led by Representatives John Conyers, Jr. and Dennis Kucinich) in a federal lawsuit challenging President George W. Bush's authority to wage war against Iraq absent a congressional declaration of war or equivalent action. Bonifaz is the author of *Warrior-King: The Case for Impeaching George W. Bush* (NationBooks-NY, 2004, foreword by Rep. John Conyers, Jr.), which chronicles that case and its meaning for the United States Constitution.

British Foreign Secretary Jack Straw states that “[i]t seemed clear that Bush had made up his mind to take military action, even if the timing was not yet decided.” “But,” he continues, “the case was thin. Saddam was not threatening his neighbours, and his WMD capability was less than that of Libya, North Korea, and Iran.”²

British officials do not dispute the document’s authenticity, and, on May 6, 2005, Knight Ridder Newspapers reported that “[a] former senior U.S. official called [the document] ‘an absolutely accurate description of what transpired’ during the senior British intelligence officer’s visit to Washington.” “Memo: Bush made intel fit Iraq policy,” *The State*, Knight Ridder Newspapers, May 6, 2005.

Why a Resolution of Inquiry is Justified

On May 5, 2005, you and 88 other Members of Congress submitted a letter to President Bush, asking the President to answer several questions arising from the Downing Street Memo. On May 17, 2005, White House press secretary Scott McClellan told reporters that the White House saw “no need” to respond to the letter. “British Memo on U.S. Plans for Iraq War Fuels Critics,” *The New York Times*, May 20, 2005, A8.

The Framers of the United States Constitution drafted Article II, Section 4 to ensure that the people of the United States, through their representatives in the United States Congress, could hold a President accountable for an abuse of power and an abuse of the public trust. James Madison, speaking at Virginia’s ratification convention stated: “A President is impeachable if he attempts to subvert the Constitution.”³ James Iredell, who later became a Justice of the U.S. Supreme Court, stated at North Carolina’s ratification convention:

The President must certainly be punishable for giving false information to the Senate. He is to regulate all intercourse with foreign powers, and it is his duty to impart to the Senate every material intelligence he receives. If it should appear that he has not given them full information, but has concealed important intelligence which he ought to have communicated, and by that means induced them to enter into measures injurious to their country, and which they would not have consented to had the true state of things been disclosed to them, - in this case, I ask whether, upon an impeachment for a misdemeanor upon such an account, the Senate would probably favor him.⁴

On July 25, 1974, then-Representative Barbara Jordan spoke to her colleagues on the House Judiciary Committee of the constitutional basis for impeachment. “The powers relating to impeachment,” Jordan said, “are an essential check in the hands of this body, the legislature, against and upon the encroachment of the Executive.” Impeachment, she added,

² The full text of the Downing Street Memo can be found at www.downingstreetmemo.com.

³ J. Elliot, *Debates in the Several State Conventions on Adoption of the Constitution, As Recommended by the General Convention at Philadelphia in 1787* (Washington: 1836), vol. 3 at 500.

⁴ *Id.*, vol. 4 at 127.

is chiefly designed for the President and his high ministers to somehow be called into account. It is designed to ‘bridle’ the Executive if he engages in excesses. It is designed as a method of national inquest into the conduct of public men. The framers confined in the Congress the power, if need be, to remove the President in order to strike a delicate balance between a President swollen with power and grown tyrannical and preservation of the independence of the Executive.⁵

The question must now be asked, with the release of the Downing Street Memo, whether the President has committed impeachable offenses. Is it a High Crime to engage in a conspiracy to deceive and mislead the United States Congress and the American people about the basis for taking the nation into war? Is it a High Crime to manipulate intelligence so as to allege falsely a national security threat posed to the United States as a means of trying to justify a war against another nation based on “preemptive” purposes? Is it a High Crime to commit a felony via the submission of an official report to the United States Congress falsifying the reasons for launching military action?

In his book Worse Than Watergate (Little, Brown and Company-NY, 2004), John W. Dean writes that “the evidence is overwhelming, certainly sufficient for a prima facie case, that George W. Bush and Richard B. Cheney have engaged in deceit and deception over going to war in Iraq. This is an impeachable offense.” *Id.* at 155. Dean focuses, in particular, on a formal letter and report which the President submitted to the United States Congress within forty-eight hours after having launched the invasion of Iraq. In the letter, dated March 18, 2003, the President makes a formal determination, as required by the Joint Resolution on Iraq passed by the U.S. Congress in October 2002, that military action against Iraq was necessary to “protect the national security of the United States against the continuing threat posed by Iraq...”⁶ Dean states that the report accompanying the letter “is closer to a blatant fraud than to a fulfillment of the president’s constitutional responsibility to faithfully execute the law.” Worse Than Watergate at 148.⁷

If the evidence revealed by the Downing Street Memo is true, then the President’s submission of his March 18, 2003 letter and report to the United States Congress would violate federal criminal law, including: the federal anti-conspiracy statute, 18 U.S.C. § 371, which makes it a felony “to commit any offense against the United States, or to defraud the

⁵ The full text of Representative Jordan’s opening statement to the House Judiciary Committee on July 25, 1974, can be found here:
http://www.utexas.edu/lbj/barbarajordanforum/PDFs/PDF_Opening%20Statement%20to%20the%20House%20Judiciary%20Committee.pdf

⁶ The full text of the President’s March 18, 2003 letter can be found here:
<http://www.whitehouse.gov/news/releases/2003/03/20030319-1.html>

⁷ As Dean writes:

With one pathetic (yet false) exception, this report explains that the president made his determination by inexplicably relying on alleged congressional findings of fact, which did not exist. Congress made no such findings, and if it had done so, it surely would not have required the president make *his* determinations. Bush, like a dog chasing his tail who gets ahold of it, relied on information the White House provided Congress for its draft resolution; then he turned around and claimed that this information (*his* information) came from Congress. From this bit of sophistry, he next stated that these congressional findings were the basis of his “determination.”

Worse Than Watergate at 148-149.

United States, or any agency thereof in any manner or for any purpose...”; and The False Statements Accountability Act of 1996, 18 U.S.C. § 1001, which makes it a felony to issue knowingly and willfully false statements to the United States Congress.

The United States House of Representatives has a constitutional duty to investigate fully and comprehensively the evidence revealed by the Downing Street Memo and other related evidence and to determine whether there are sufficient grounds to impeach George W. Bush, the President of the United States. A Resolution of Inquiry is the appropriate first step in launching this investigation.

The following is suggested language for this resolution:

Directing the Committee on the Judiciary to undertake an inquiry into whether sufficient grounds exist to impeach George W. Bush, the President of the United States.

Whereas considerable evidence has emerged that George W. Bush, President of the United States, has engaged in a conspiracy to deceive and mislead the United States Congress and the American people as to the basis for taking the nation into war against Iraq, that George W. Bush, President of the United States, has manipulated intelligence so as to allege falsely a national security threat posed to the United States by Iraq, and that George W. Bush, President of the United States, has committed a felony by submitting a false report to the United States Congress on the reasons for launching a first-strike invasion of Iraq: Now, therefore, be it

Resolved, That the Committee on the Judiciary is directed to investigate and report to the House of Representatives whether sufficient grounds exist to impeach George W. Bush, President of the United States. Upon completion of such investigation, that Committee shall report thereto, including, if the Committee so determines, articles of impeachment.

Conclusion

The Iraq war has led to the deaths of more than 1,600 United States soldiers and tens of thousands of Iraqi civilians. Thousands more have been permanently and severely injured on both sides. More than two years after the invasion, Iraq remains unstable and its future unclear. The war has already cost the American people tens of billions of taxpayer dollars at the expense of basic human needs here at home. More than 135,000 U.S. soldiers remain in Iraq without any stated exit plan.

If the President has committed High Crimes in connection with this war, he must be held accountable. The United States Constitution demands no less.