

# commentary

from other pens...

## Bush sees victory, critics see perils

In laying out his case against Iraqi leader Saddam Hussein, President Bush left the clear impression that military action is all but inevitable because of the peril he believes Saddam poses.

"It would take one vial, one canister, one crate slipped into this country to bring a day of horror like none we have ever known," he said in his State of the Union address Tuesday night.

"We will do everything in our power to make sure that that day never comes," he said, adding that the outcome won't be in doubt. "We will prevail," he said.

Only fleetingly did he describe the potential risks involved in pursuing the military option against Saddam.

"For the brave Americans who bear the risk, no victory is free from sorrow. This nation fights reluctantly because we know the cost and we dread the days of mourning that always come."

But perhaps the greatest risk is that a U.S.-led attack will actually increase the likelihood of a retaliatory attack by Iraq on the U.S. Richard Betts of Columbia University writes in the current issue of Foreign Affairs magazine that if a U.S. invasion succeeds, "Saddam will have no reason to withhold his best parting shot — which could be the use of weapons of mass destruction inside the U.S.

"Such an Iraqi attack on U.S. civilians could make the death toll from September 11 look small."

Betts' view is not that of an observer on the ideological fringes.

Last fall, CIA Director George Tenet agreed, at the request of Sen. Bob Graham, D-Fla., to declassify material from a previously secret CIA analysis of Saddam's intentions and capabilities.

The key paragraphs read: "Should Saddam conclude that a U.S.-led attack could no longer be deterred, he probably would become much less constrained in adopting terrorist actions. ...

"Saddam might decide that the extreme step of assisting Islamist terrorists in conducting a WMD (weapons of mass destruction) attack against the United States would be his last chance to exact vengeance by taking a large number of victims with him."

This view is shared by former President Clinton.

There are other concerns. Ivan Eland, director of defense policy studies at the Cato Institute, a libertarian group in Washington, worries about a post-Saddam U.S. military occupation of Iraq.

"Occupation of an Islamic country by the United States could be a recruiting poster for Islamic terrorists," Eland wrote recently. "We should remember the worldwide mobilization of Islamic radicals to fight the Soviets in Afghanistan. An invasion of Iraq would play right into al-Qaida's hands. Terrorists hope for an excessive, intrusive response by their adversary so that they can recruit more supporters."

Bush promised that the American presence will be entirely benign: "We will bring to the Iraqi people food and medicines and supplies and freedom."

Bush believes there is danger in waiting.

"Some have said we must not act until the threat is imminent," the president said Tuesday night. "Since when have terrorists and tyrants announced their intentions, politely putting us on notice before they strike?"

"If this threat is permitted to fully and suddenly emerge, all actions, all words and all recriminations would come too late. Trusting in the sanity and restraint of Saddam Hussein is not a strategy and it is not an option."

The president drew a link between Iraq and al-Qaida that went beyond anything he had said previously.

He pointed to reports from detainees that Saddam is aiding al-Qaida members, among other terrorists. "Secretly," he said, "and without fingerprints, he could provide one of his hidden weapons to terrorists, or help them develop their own."

**EDITOR'S NOTE** — *George Gedda has covered foreign affairs for The Associated Press since 1968.*



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## Playing politics with a T-shirt mentality

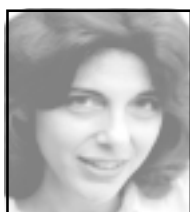
It's one thing for a pop star like Sheryl Crow, sorry, an "activist for recording artist's rights" like Crow to wear her gross political naivete across her T-shirt in black sequins that spell, "WAR IS NOT THE ANSWER." She had this mini-manifesto "specially made," as the Associated Press reported, for her appearance on the American Music Awards last week. Crow had obviously not exhausted the subject with her last rejoinder to the Bush administration's Iraq policy, a white T-shirt emblazoned with "I DON'T BELIEVE IN YOUR WAR, MR. BUSH!" worn during a December performance on "Good Morning, America."

And imagine, there was still more to say. "I think war is based in greed and there are huge karmic retributions that will follow," she explained to the AP. "I think war is never the answer to solving any problems. The best way to solve problems is not to have enemies."

Ah, so. War is greed (tell the "greatest" generation), war is never the answer (tell George Washington, Winston Churchill and the emir of Kuwait), and the way to avoid it is not to have enemies (tell a shrink).

Mass politicking by uninformed celebrities is not without harm, but the world isn't really in trouble until the shallow slogans of the soundstage start to echo and reverb across the world stage. Which'll never happen, right? Take another sound check. This past week, France and Germany may have appeared to unveil their joint anti-war policy on Iraq, but what La France and its warm-up act Germany really did was kick off their 2003 international tour, "War Is Not the Answer."

The show began at the United Nations. In what the Washington Post called "a diplomatic version of an ambush," France threw itself into the spokes of a Security Council exchange on terrorism to declare its opposition to war on Iraq. Concluding that such a war would bring



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death, regional instability (the instability of assorted brutal dictatorships?) and an increase in terrorism (more on that below), French foreign minister Dominique de Villepin announced, "nothing today justifies envisaging military action." Germany followed suit — and then some: "Do not expect that Germany will agree to a resolution that legitimizes war," German Chancellor Gerhard Schroeder told a crowd in Germany.

Funny how this Franco-German front coincides with the 40th anniversary celebration of the Elysee friendship treaty between the two nations. According to Cybercast News Service, ever-increasing Franco-German chumminess is said to include proposals "for regular joint cabinet meetings and a unified system of citizenship and law for the two countries." There have even been calls for a "Franco-German Union" with "common foreign, security and economic policies."

Bienvenue/willkommen to the Franco-German Union — against a war on Iraq. Interesting continental coalition, that. A London Times analysis explains it this way: "For these two countries, what legitimizes a united Europe is the complete rejection of war in all its forms. If you base your whole philosophy as a European Union on that, then ultimately you are going to get into a problem with a world that sees war as an instrument of diplomatic change."

But is pure pacifism really the "whole philosophy" of these scaly Old World cynics? Only a pop star in sequins could buy that. Still,

there's more of the Crow doctrine in this Franco-German Union than meets the eye. Remember the "huge karmic retributions" Ms. Crow spoke of? Both France and Germany cite a potentially heightened risk of Islamic terrorism as a reason not to go to war in Iraq, a notion that should perplex the average citizen of the Free World now living with an already heightened risk (and reality) of Islamic terrorism — without going to war in Iraq.

And remember Ms. Crow's secret to peace being "having no enemies"? On this point, it's worth considering what historian Bat Ye'or reminds us of in his book "Islam and Dhimmitude" (Farleigh Dickinson Press, 2001): that France's historic tilt toward the most radical elements in the Arab world — for example, its role in lending respectability to the PLO, its opposition to the Egyptian-Israeli peace treaty, its historic support of the Ba'ath parties in Syria and Iraq — seems to have deflected much of the Islamic terrorism that has beleaguered the United States and Israel. In other words, France has had "no enemies" likely to fight jihad against it. And she'll do anything, it seems, to keep it that way.

According to the London Telegraph, the French government is now considering trashing a bedrock principal of the French Republic — the separation of church and state — to fund the building of mosques to keep France's second largest religion from falling "further" under the sway of radical, foreign (and particularly Saudi Arabian) powers.

Suddenly, Franco-German "pacifism" begins to look like something else: lying down and playing dead. It keeps the karmic retributions away — maybe — but it doesn't look too good on a T-shirt.

*Diana West is a columnist for The Washington Times. She can be contacted via dianaww@attglobal.net.*

## An abandoned American citizen

A unanimous three-judge panel of the 4th U.S. Circuit Court of Appeals ruled on Dec. 8 that an American citizen, Yaser Esam Hamdi, can continue to be imprisoned indefinitely in a Navy brig on American soil without charges, incommunicado and without access to his lawyer. There was rejoicing in the Justice Department.

Attorney General John Ashcroft declared the decision was an "important victory for the president's ability to protect the American people in time of war."

Looked at closely, the decision was actually a victory by the government over due process — fairness — that is at the core of our constitutional system. At the same time, it was a defeat for another foundation of American justice: the separation of powers. The 4th Circuit so agreeably deferred to the executive branch of government that Hamdi did not receive meaningful judicial review of his imprisonment.

The 4th Circuit, along with most of the media, agreed with the government that Hamdi had been captured "in a zone of active combat" in Afghanistan as an enemy combatant. The press keeps saying he was fighting in the ranks of the Taliban. So does the government. But is this true? Was he an enemy combatant?

Consider this statement by the 4th Circuit: "The factual averments in the (government's) affidavit, if accurate, are sufficient to confirm that Hamdi's detention conforms with legitimate exercise of the war powers given the executive."

Keep in mind the phrase "if accurate." The 4th Circuit based this ruling solely on a two-page, nine-paragraph affidavit by Michael Mobbs of Donald Rumsfeld's Defense Department. Since the prisoner has not been permitted to see or speak to his attorney, federal public defender Frank Dunham, and he has not been able to testify as to whether this affidavit is accurate. Hamdi has been denied his Sixth Amendment right to confront his accusers.

"Nobody knows what Hamdi's version of the facts might be," his lawyer says. But the 4th Circuit judges have certainly read the record



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of the previous hearing, without Hamdi being present, before federal District Judge Robert Doumar, a Reagan appointee with a reputation for careful adherence to due process and the separation of powers.

Having read the government's two-page affidavit, Judge Doumar said in open court, "I'm challenging everything in the Mobbs declaration. ... A close inspection of the declaration reveals that (it) never claims that Hamdi was fighting for the Taliban ... Is there anything in here that said Hamdi ever fired a weapon? ...

"Without access to the screening criteria actually used by the government in its classification decision (that Hamdi was an enemy combatant), this court," said Judge Doumar, "is unable to determine whether the government has paid adequate consideration to the due process rights which Hamdi is entitled."

By keeping Hamdi in a military prison without charges so that he can be interrogated indefinitely — without the basic constitutional rights of an American citizen — the 4th Circuit is not only ignoring Judge Doumar's legitimate due-process concerns, but the 4th Circuit is also essentially abdicating its own responsibility under the separation of powers.

As Stephen Dycus, an expert in national security law at the Vermont Law School, said in the Jan. 8 Washington Post: "Despite some lip service about the courts reserving some role for themselves (in this case), (the 4th Circuit) really doesn't play that role." As a Jan. 16 Newsday editorial read: "If judges take what the government says as gospel, then judicial review will be a sham."

Going farther to illuminate this bypassing of the separation of powers in Hamdi's case, Elisa Massimino — a director for the Lawyers Committee for Human Rights — emphasized in the Jan. 9 New York Times that the 4th Circuit

"seems to be saying that it has no role whatsoever in overseeing the administration's conduct of the war on terrorism. That is particularly disturbing in the context of a potentially open-ended, as-yet-undeclared war, the beginning and end of which is left solely to the president's discretion."

As a result of this decision, Hamdi's court of last resort is the U.S. Supreme Court, to which an appeal has been made. If this court agrees with the 4th Circuit, yet more serious damage to the Constitution will have resulted from the administration's war on terrorism — which the president and his colleagues have continually maintained will be fought "within the bounds of the Constitution."

Is anyone in Congress concerned with the erosion of the separation of powers as Yaser Esam Hamdi remains in solitary confinement, abandoned so far by the Bill of Rights?

*Nat Hentoff is a nationally renowned authority on the First Amendment and the Bill of Rights.*

### berry's world

**EDITOR'S NOTE:** Jim Berry is on vacation. Please use this classic cartoon, which was originally printed in 1995.



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