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Policy Making in the Bush White House

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The White House Office is so large and complex that a systematic process of policy evaluation is essential in order to provide the president with a range of options on all important policy decisions. Some of the most important decisions that President Bush has made have been taken without the benefit of broad deliberation within the White House or Cabinet. This paper will take up four cases of policy decisions to illustrate the lack of a regular policy process and consultation that characterized many important decisions of the Bush administration. Two focus on detainee policy: the military commissions order of Nov. 13, 2001 and the Feb. 7, 2002 decision to suspend the Geneva Conventions. And two are about the war in Iraq: the initial decision to go to war, and the decision to disband the Iraqi army. The pattern that emerges from an examination of these four decisions is one of secrecy, top-down control, tightly held information, disregard for the judgments of career professionals, and the exclusion from deliberation of qualified executive branch experts who might have disagreed with those who initially framed the decisions.



© Reuters/Yuri Gripas - U.S. President George W. Bush (2nd R) talks to the media after a meeting with administration officials at the White House in Washington.

"The process of moving paper in and out of the Oval Office, who gets involved in the meetings, who does the president listen to, who gets a chance to talk to him before he makes a decision, is absolutely critical. It has to be managed in such a way that it has integrity."
Dick Cheney (Gellman and Becker 2007a)

"The staffing system on Presidential decisions must have integrity, and be known to have integrity. When the President is making a decision, either be sure he has the recommendations of the appropriate people, or conversely, that he knows he does not have their views and is willing to accept the disadvantages that will inevitably result." Donald Rumsfeld (1989, 38)

Introduction

Dick Cheney and Donald Rumsfeld came to the above conclusions after their experience as President Ford's chiefs of staff – Rumsfeld first, and after he was appointed Secretary of Defense, Cheney as his successor in the White House. They both emphasized the integrity of the policy process because a president can easily make a disastrous decision if he or she does not have the full range of informed judgment from the relevant senior people in the administration. The White House Office is so large and complex that a systematic process of policy evaluation is essential. Those who have expertise, authority, or implementation responsibilities must have a way to get their judgments to the president, or the president will act from an incomplete understanding of the implications of the policy decision.



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In a conference of former chiefs of staff to several presidents, Cheney pointed out the danger of an “Oh, by the way” decision. That is, there is a danger of the president “making some kind of offhand decision that hadn’t been carefully thought about, and then people took it and ran with it. It’s what I called an ‘Oh, by the way’ decision. . . . That’s when you really got into big trouble” (Kernell and Popkin 1986, 19-21).

Rumsfeld articulated the principle that in order to make wise decisions, the president should not be shielded from those who disagree with the current consensus in the White House. “Avoid overly restricting the flow of paper, people, or ideas to the President. . . . Don’t allow people to be cut out of a meeting or an opportunity to communicate because their views may differ from the President’s views. . . . The staff system must have discipline to serve the President well. . . . (Rumsfeld, 1989, 37, 39). The problem in the George W. Bush White House was that these rules were ignored at important junctures by each of these two administration officials. The results were disastrous.

Decision Making in the White House

Both practitioners and scholars begin from the premises that no one individual can hope to understand all of the ramifications of decisions facing the president and that staff structures and processes are thus necessary to enable the president to make informed decisions. Of course, well-organized advisory systems cannot guarantee good decisions. As President Eisenhower put it, “Organization cannot of course make a successful leader out of a dunce, any more than it should make a decision for its chief. But it is effective in minimizing the chances of failure and in insuring that the right hand does, indeed, know what the left hand is doing” (1965, 630).

One way to ensure that the decisions facing the president have undergone systematic analysis by the experts and professionals in the administration is to

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prescribe an orderly policy process. One veteran staffer of the National Security Council put it this way:

The idea is to have working-level officials from across the government meet to hammer out a policy, then move it up level by level, refining it at each step, until it reaches the national security cabinet known as the Principals Committee. The long road to a principals meeting in the White House Situation Room ensures, to the extent possible, that the government does its due diligence and that the affected agencies buy into the new policy (Benjamin 2008).¹

The principles of presidential management, gleaned from the practical experience of White House veterans, have been echoed in the political science literature on presidential decision making. The consensus in the scholarly literature is that presidents will make better decisions if they consider a range of realistic options and alternative policies brought to their attention. This is a primary function of a presidential advisory system and overall White House Organization (Wallcott and Hult 1995). And the key to eliciting these alternatives from aides is to encourage contrasting perspectives. Presidents need frank advice and unvarnished evaluations. If aides trim their advice to suit the perceived predispositions of their superiors, they will not serve the president well. If presidents discourage dissent, their aides will anticipate their wishes and self-censor conflicting views. This may lead to a narrow focus and the neglect of alternative courses of action.

Meena Bose (1998) has compared Eisenhower's more formal advisory system with Kennedy's less formal system and concludes that the Eisenhower approach was superior. In Eisenhower's words:

I know of only one way in which you can be sure you've done your best to make a wise decision. This is to get all of the people who have partial and definable responsibility in this particular field, whatever it may be. Get them with their different viewpoints in front of you, and listen to them debate (Burke et al., 54).

Students of presidential decision making have come to similar formulations of the elements of informed decision making in the White House.

Alexander George (1972, 1980) argued that presidents needed to assure that their advisory systems provide them with a range of alternatives for any important decision and that the best way to assure this was a system of "multiple advocacy." Irving Janis (1982) analyzed the effects of small-group solidarity in situations where the stakes are high, pressure is great, and secrecy is important. The danger in these instances is that the group will develop the illusion of invulnerability and inherent morality, underestimate the enemy and chances of failure, and will fail to reexamine their initial assumptions. Janis used the term "groupthink" to characterize such situations and analyzed cases of presidential decision making to illustrate the syndrome as well as cases when it was avoided.²

In making many important decisions, the administration lacked an orderly policy-making process and the benefit of an honest broker.

One way to assure that the president is exposed to differing perspectives in national security policy is for the president's top aide to adopt an "honest broker" role. This concept implies that in any important decision-making situation, the staffer presents to the president in a neutral way the most important policy alternatives and represents faithfully the views of the advocates of different policy alternatives. The president can thus have confidence that the dice are not loaded in favor of only one or another alternative (or staffer). Playing the role of honest broker does not preclude the staffer from giving his or her best advice to the president, but it assures that this judgment will not unfairly subvert the judgments of other staffers. Roger Porter has described this approach as "a managed process relying on an honest broker to insure that interested parties are represented and that the debate is structured and balanced" (Porter 1980, 16).³ The honest broker role with respect to the assistant to the president for national security affairs has been analyzed by Burke (2005a, 2005b, 2007, forthcoming), Destler (1972, 1981), and Mulcahy and Crabb (1991), among others.

A central theme throughout the decision-making literature is that the president needs frank advice about alternatives and that an effective airing of that advice can come only if the president is exposed to contrasting perspectives. In the George W. Bush administration, however, advice to the president was dominated by Vice President Cheney, and he was effectively able to manage the policy process to ensure that his preferences prevailed.⁴ In making many important decisions, the administration lacked an orderly policy-making process and the benefit of an honest broker. In Bush's case such a process would have helped because, in Scott McClellan's words, "He is not one to delve deeply into all the possible policy options . . . before making a choice. Rather, he chooses based on his gut and his most deeply held convictions. Such was the case with Iraq" (McClellan 2008, 127). President Bush's role was characterized by Alan Brinkley: "George Bush was an eager enabler, but not often an active architect, of the government's response to terror. His instinct was to be tough and aggressive in response to challenges, and Cheney's belligerence fit comfortably with the president's own inclinations" (2008).

Treasury Secretary Paul O'Neill thought that the Bush White House had no serious domestic policy process during its first years in office. "It was a broken process. . . or rather no process at all; there seemed to be no apparatus to assess policy and deliberate effectively, to create coherent governance" (Suskind 2004, 97). John DiIulio, who worked in the Bush White House on faith-based initiatives for the first eight months of the administration, said: "There is no precedent in any modern White House for what is going on in this one: a complete lack of a policy apparatus" (Suskind 2003). Jack Goldsmith, a Bush appointee as director of the Office of Legal Counsel, characterized the Bush administration's "concept of power" as entailing "minimal deliberation, unilateral action, and legalistic

defense" (Goldsmith, 2007, 205).

Before examining the cases of flawed decision making and lack of deliberation that are the subject of this paper, it may be useful to mention two decisions by President Bush that were made after appropriate policy deliberation: the decision to go to war in Afghanistan and the decision to order the "surge" in U.S. troops in Iraq in 2007.

Despite the time pressure immediately after 9/11 to do something quickly, President Bush deliberated over the following two months, considered a range of options, and decided upon a (militarily) successful policy. To plan the administration's response to the terrorist attacks, President Bush assembled his "war cabinet," which included Vice President Cheney, National Security Adviser Condoleezza Rice, Secretary of State Colin Powell, Secretary of Defense Donald Rumsfeld, Chief of Staff Andrew Card, and Director of Central Intelligence George Tenet (Woodward 2002, 37-38).

The war cabinet considered several options for the U.S. pursuit of al-Qaeda in Afghanistan: a strike with cruise missiles, cruise missiles combined with bomber attacks, or "boots on the ground," that is U.S. soldiers in Afghanistan (Woodward 2002, 79-80). Although attacking Iraq in response to 9/11 was proposed by Deputy Secretary of Defense Paul Wolfowitz, the president decided to delay that option. During the deliberations, Condoleezza Rice demonstrated her skill acting as an honest broker and custodian of the decision-making process (Burke 2005a, 2005b). She did not often insert her own views or act as a policy advocate, but sharpened questions, focused the discussions and clarified issues for presentation to the president. She gave her personal advice to the president privately, and at meetings acted as custodian of the process.

At times, Rice was even willing to challenge the president's judgment and urge caution. For instance, in early October President Bush was impatient to get U.S. troops into Afghanistan. At one point, when Rice informed him that more time for planning and staging was needed by the military, he responded, "That's not acceptable!" (Woodward 2002, 157). But Rice prevailed by explaining the reasoning of military leaders. Contrasting views were presented, even though Bush did not encourage spirited debate over important issues.

Similarly, in his decision to increase the number of troops in Iraq in 2007 (the "surge"), Bush considered a range of perspectives. The Baker-Hamilton Commission had recommended several diplomatic initiatives, pressure on the Iraqi government and a gradual disengagement of American troops in Iraq. Despite a broad range of sentiment supporting those proposals, President Bush decided to reject them and increase the number of troops in Iraq with the hope of turning the tide of the insurgency (Barnes 2008). Bush's plan to send more troops was not favored by the Joint Chiefs of Staff; Secretary of State Rice; the American commander in Iraq, General George Casey; or head of Central Command, General John Abizaid.

Bush went to the Pentagon to listen to the analysis of military leaders and to convince them that he was determined to carry out the surge. Bush told Fred Barnes that “Not every meeting in the White House is a formal meeting, and a lot of times decisions can be formulated outside the formal process” (Barnes 2008, 3). Despite the lack of formal deliberation before his decision, President Bush did engage in a wide range of discussions with those who disagreed with his plans for a surge. Even though Bush had made up his mind by this time, there was an NSC review in October 2006, and an interagency task force that met between November and January. On Dec. 11, he brought five military experts who were not part of the administration to examine different options.

Despite those who were against a surge, President Bush decided to go ahead with his earlier plans to increase the number of troops in Iraq by about 20,000 over the next six months and made his decision public on Jan. 10, 2007. Regardless of one’s judgment about the wisdom of the surge, President Bush had considered an array of alternatives articulated by military and civilian administration leaders as well as outside experts.

The paper will now turn to the more typical cases of decision making that did not resemble the relatively well-informed decisions about the war in Afghanistan and the 2007 troop surge in Iraq. The first two concern the detainee policies that led to the abuse and torture of prisoners by U.S. personnel; the second two will consider the decision to go to war and to disband the Iraqi army after the U.S. military victory.

Two Decisions on Detainee Policy

The Military Commissions Order of Nov. 12, 2001, and the decision to suspend the Geneva Conventions in early 2002 set the conditions for the abuse and torture of detainees at Guantanamo, Bagram Air Force Base in Afghanistan and at Abu Ghraib in Iraq (Pfiffner 2008, 128-167; Pfiffner forthcoming).

A. The Military Commissions Order, Nov. 13, 2001

When a small group of lawyers was preparing President Bush’s Military Order of Nov. 13, 2001, they felt that normal trials (civilian or Uniform Code of Military Justice) would afford too many legal protections to terrorists, and thus were “not practicable,” (Sec. 1(f)) so the order required that military commissions be established entirely within the executive branch to try suspected terrorists (Bush 2001). In the order, President Bush declared that any non-citizen “whom I determine” (Sec. 2(a)) was a terrorist or abetted one, could be “detained at an appropriate place” by the Secretary of Defense and tried by military tribunals created by the Secretary of Defense (Fisher 2005, 168). The order also declared that no court would have jurisdiction to hear any appeal of a decision or for a writ of habeas corpus (Sec. 2(a)). Any evidence would be admitted that would

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“have probative value to a reasonable person” (Sec. 7(2)). Evidence obtained through torture might be considered reasonable to a presiding officer.

The Military Commissions order was important because it created the new category of “enemy combatant” to avoid the “prisoner of war” category that would have invoked the Geneva Conventions. People could be labeled enemy combatants at the president’s discretion. In accord with the president’s decision to suspend the Geneva Conventions made the next month, enemy combatants would not be entitled to the protections of the Geneva rules, either for prisoners of war or for others held at the mercy of opposing forces. This determination led to the abuse and torture of detainees.

It may be reasonable to use lawfully established military commissions to try enemy belligerents. However, the procedures set out in DOD Military Commission Order No. 1 (March 21, 2002) contained a number of problems (Rumsfeld 2002). They provided no independent authority, other than the president’s decision, to establish military tribunals. Military commissions that have been established by previous presidents were created pursuant to acts of Congress, which has the constitutional authority to “define and punish . . . Offenses against the Law of Nations.” (Art. I, Section 8, Clause 10). Neither did the commissions provide for any review outside the executive branch. That is, the person would be indicted by a subordinate of the president based on evidence provided by subordinates of the president; the defendant would be tried by subordinates of the president; the defendant would be sentenced by subordinates of the president; and the only appeal would be to the president.

An interagency working group had been examining the legal implications of how to handle detainees who might have been members of the Taliban or al-Qaeda. It was led by Pierre Prosper, who was ambassador at large for war crimes. But according to Timothy E. Flanigan (deputy White House counsel), David Addington felt it would be useful to demonstrate that the president was not dependent on legal bureaucrats in making decisions “without their blessing – and without the interminable process that goes along with getting that blessing” (Gellman and Becker 2007a). National Security Adviser Rice and Secretary of State Colin Powell knew that the Prosper Committee was working on the issue and thought that they would have some input when the order was drafted. But in late October Cheney felt that the process was taking too long and he short-circuited the process and ignored the Prosper Committee work.

The order was drafted by David Addington, the vice president’s lawyer, and was purposefully kept secret from the rest of the administration. Addington forcefully expressed his attitude toward consultation: “F*** the interagency process” (Mayer 2008, 80). One of the few lawyers who did see the draft said that it “was very closely held because it was coming right from the top” (Gellman and Becker 2007a). Because President Bush had not yet seen the draft, “the top” must have meant Vice President Cheney. One might expect that such

an important and far-reaching order would involve consultation with the national security adviser, the secretaries of State and Defense or military lawyers from the Judge Advocate General Corp. But Vice President Cheney gave strict instructions that others in the White House and Cabinet be bypassed before President Bush signed it. Head of the Criminal Division in the Justice Department, Michael Chertoff, was also excluded, as was John Bellinger, the NSC legal adviser.

The decision to write the draft without respect to the Uniform Code of Military Justice, enacted in law, was based on a legal memorandum by John Yoo on Nov. 6. When asked why the Secretary of State (State has jurisdiction over treaties, like Geneva and international law experts) was not shown the draft, Yoo said "The issue we dealt with was: Can the president do it constitutionally? State - they wouldn't have views on that" (Gellman and Becker 2007a).

When Attorney General John Ashcroft saw the draft, he was upset that the Justice Department would not have a role in deciding which terrorist suspects would be tried by military commission and which in the criminal justice system. When he went to the White House to object, he found that the Vice President was in charge of the order and that John Yoo of the Office of Legal Counsel had recommended that the U.S. court system be avoided. Ashcroft wanted to see the president about the issue, but Cheney denied him access to the president (Gellman and Becker 2007a).

Military lawyers were generally excluded from commenting on the draft of the military order. Rear Admiral Donald J. Guter, the Navy Judge Advocate General, said "I can't tell you how compartmented things were. This was a closed administration" (Golden 2004). On Nov. 9, four days before the president signed the order, DOD General Counsel William J. Haynes II allowed a small group of lawyers, headed by Lawrence J. Morris, to look at a draft of the order, but he was not allowed to have a copy or take notes. At the last minute, Army JAG Major General Thomas Romig called a group of military lawyers together over the weekend to try to make some changes, but their efforts were unavailing (Ragavan 2006, 37; Golden 2004).

On Nov. 13 Cheney personally took the document to President Bush in his private dining room to clear it with him. After Bush's concurrence, Cheney made sure that no one could make any last-minute objections. Cheney gave it to Addington and Flanigan, who took it to associate White House counsel Bradford Berenson, who was not told that it came from Cheney. Berenson took it to the staff secretary, Stuart Bowen Jr., who was told not to let other White House staffers see it and to prepare it for the president's signature. Despite Bowen's objections that other relevant staffers had not seen the document, he was told that the president was waiting to sign it, that it was too sensitive and that there was no time for others to vet it (Gellman and Becker 2007a). Cheney then took the document to the president in the Oval Office, and Bush signed it

immediately. White House aides present said they did not know that the vice president had been involved in drafting the memo. Thus Cheney had engineered President Bush's approval and signature without any policy process or sign-off by relevant White House and Cabinet officials, most importantly National Security Adviser Rice and Secretary of State Colin Powell.

On the evening of Nov. 13, when CNN broadcast that the military order had been signed by the president, Colin Powell exclaimed "What the hell just happened?" (Gellman and Becker 2007a). National Security Adviser Rice sent an aide to find out about the order.

One of the ostensible purposes of vetting important decisions with White House staffers and members of the Cabinet who might have expertise or be involved with implementing orders is that they might know something that the vice president or his lawyers do not know about the issue. Vice President Cheney had been successful in excluding from the decision process anyone who might have disagreed with his draft of the order; he got his way, but the decision led to a flawed legal framework for dealing with detainees in the war on terror. The consequences of excluding outside input on the draft came when the Supreme Court, in *Hamdan v. Rumsfeld*, struck down the military commissions plan because they were not set up in accord with United States law or the Uniform Code of Military Justice.⁵

B. Suspending the Geneva Conventions, Feb. 7, 2002

In the fall of 2001, Bush administration officials felt tremendous pressure not only to pursue those who had committed the 9/11 atrocities but also to prevent future attacks, which they assumed were in planning stages. In order to obtain crucial intelligence, the United States would have to depend on the interrogation of prisoners to discover plans for future attacks. Thus the traditional interrogation techniques developed by the U.S. military and limited by the strictures of the Geneva Conventions would not be sufficient, they thought. In late 2001 and early 2002, the administration went about exempting U.S. interrogators from the Geneva rules.

Top members of the Bush administration thought that terrorists did not deserve to be treated in accord with Geneva rules because they did not represent a state that had signed the agreement, and they were terrorists who did not act according to the rules of war. Accordingly, John Yoo at the Office of Legal Counsel, working with David Addington, wrote legal memoranda arguing that the United States was not bound by the Geneva Conventions (Yoo 2002; Bybee 2002).

The Judge Advocate Generals of the services (JAGs or TJAGs), however, were not consulted about the decisions (Sands 2008, 32). That is, those who, because of their training and years of experience, were among the most informed and qualified lawyers on the laws of war, were excluded because they might have

raised objections about the legal reasoning or the policy implications of this decision. Administration lawyers were careful to maximize the chances that their preferred policies would be adopted without change. As David Addington reportedly said, “Don’t bring the TJAGs into the process, they aren’t reliable” (Sands 2008, 32).

In a public statement on Jan. 11, 2002, Secretary of Defense Rumsfeld said that the Guantanamo detainees would be “handled not as prisoners of war, because they’re not, but as unlawful combatants [who] do not have any rights under the Geneva Convention” (DeYoung 2006, 367). State Department Counsel William Taft replied to Yoo’s memo, arguing that “Both the most important factual assumptions on which your draft is based and its legal analysis are seriously flawed” (DeYoung 2006, 367). “In previous conflicts, the United States has dealt with tens of thousands of detainees without repudiating its obligations. I have no doubt we can do so here” (2006, 368). Taft considered the issue to be in the process of policy development prior to its being considered by the NSC principals, but President Bush made his decision on Jan. 8, and Secretary Powell was informed of the decision on Jan. 18, when he was in Asia (Mayer 2008, 123; DeYoung 2006, 368). Taft learned that the president had determined that the Justice Department’s interpretation would prevail.

On Jan. 25 a memo to the president from his counsel, Alberto Gonzales, reaffirmed the reasoning of the DOJ memos and recommended that Geneva Convention III on Treatment of Prisoners of War should not apply to al-Qaeda and Taliban prisoners. He reasoned that the war on terrorism was “a new kind of war” and that the “new paradigm renders obsolete Geneva’s strict limitations on questioning of enemy prisoners. . . .” Gonzales restated the memos’ arguments that exempting captured al-Qaeda and Taliban prisoners from the Geneva Convention protections would preclude the prosecution of U.S. soldiers under the U.S. War Crimes Act. “A determination that GPW is not applicable to the Taliban would mean that Section 2441 [War Crimes Act] would not apply to actions taken with respect to the Taliban” (Gonzales 2002).

Powell objected to the reasoning of Gonzales’s Jan. 25 memo recommending that Bush abandon Geneva. In a memo of January 26, 2002, he argued that the drawbacks of deciding not to apply the Geneva Conventions outweighed the advantages because “It will reverse over a century of policy . . . and undermine the protections of the law of war for our troops, both in this specific conflict and in general; It has a high cost in terms of negative international reaction. . . ; It will undermine public support among critical allies. . . .” (Powell 2002) Powell also noted that applying the Convention “maintains POW status for U.S. forces . . . and generally supports the U.S. objective of ensuring its forces are accorded protection under the Convention.” The memo also addressed the intended applicability of the Convention to nontraditional conflicts: “[T]he GPW was intended to cover all types of armed conflict and did not by its terms limit its

application (Powell 2002)."

Although Powell felt that the proper place to make a formal recommendation to the president on such a crucial issue was in a principals' meeting, he asked Rice for a meeting with the president to discuss the issue personally. Treaty issues, particularly the abandoning of such an important international agreement, were in the jurisdiction of the State Department, but the decision had been made without Powell's advice and without any formal, high-level discussion of the issues. Powell met with the president on Jan. 21, where he said: "I wanted everybody covered, whether Taliban, al-Qaeda or whatever, and I think the case was there for that" (DeYoung 2006, 369).

Though Bush rejected Powell's argument, he did call a NSC meeting for January 28. But before the meeting, a memorandum drafted by David Addington for Alberto Gonzales was leaked to the *Washington Times*. The memo refuted Powell's arguments in advance of the NSC meeting and argued that the "new paradigm" of non-state warfare rendered obsolete the Geneva Conventions. The *Times* said that OLC opinions were definitive and reported that international administration "sources" said the Powell "was bowing to pressure from the political left" (Gellman and Becker 2007a). If that were true, the "political left" included several general counsels of the military services and the Judge Advocate Generals of the services (DeYoung 2006, 371). According to Powell, the leak was made "in order to try to screw me" and "blow me out of the water" (DeYoung 2006, 370). Powell was right.

Despite Powell's memo, and in accord with the Justice Department and his counsel's recommendations, President Bush signed a Feb. 7, 2002, memorandum that stated: "Pursuant to my authority as Commander in Chief . . . I . . . determine that none of the provisions of Geneva apply to our conflict with al Qaeda in Afghanistan or elsewhere throughout the world because, among other reasons, al Qaeda is not a High Contracting Party to Geneva." The memo argued that the Geneva Convention applies only to states and "assumes the existence of 'regular' armed forces fighting on behalf of states," and that "terrorism ushers in a new paradigm," that "requires new thinking in the law of war." The memo also stated that "As a matter of policy, the United States Armed Forces shall continue to treat detainees humanely and, *to the extent appropriate and consistent with military necessity*, in a manner consistent with the principles of Geneva." (Bush 2002b, emphasis added). This determination allowed the use of aggressive techniques of interrogation used by the CIA and military intelligence at Guantanamo that were later, in the fall of 2003, used at the prison at Abu Ghraib.

The purpose of the suspension of the Geneva Conventions by the administration was to ensure that prisoners in Guantanamo did not have to be treated according to the Geneva rules; thus interrogators could apply harsh interrogation techniques to gain intelligence on terrorist activities; and to ensure that the U.S. War Crimes statute (which referenced the Geneva rules) did not

The decision by President Bush to suspend the Geneva Conventions was engineered by Vice President Cheney and David Addington.

apply to interrogators.

The impact of the abandonment of the Geneva Conventions for the war on terrorism was emphasized by General Ricardo Sanchez, former head of U.S. forces in Iraq, who said that the president's decision "unleashed the hounds of hell" (Mayer 2008, 242). He explained:

This presidential memorandum constitutes a watershed event in U.S. military history. Essentially, it set aside all of the legal constraints, training guidelines, and rules of interrogation that formed the U.S. Army's foundation for the treatment of prisoners on the battlefield since the Geneva Conventions were revised and ratified in 1949 (Sanchez 2008, 144).

The irony in this evaluation by Sanchez was that the Bush administration publicly and explicitly acknowledged that the Geneva Conventions *did* apply to Iraq because it was a signatory to the treaty, as was the United States. That crucial distinction was lost on U.S. forces in Iraq and it demonstrates how difficult it is to limit torture and harsh interrogation tactics once they are authorized. The other irony in Sanchez's statement was that he himself issued a memorandum in September 2003 that authorized the use of illegal interrogation practices in Iraq (Sanchez 2003).

In sum, the decision by President Bush to suspend the Geneva Conventions was engineered by Vice President Cheney and David Addington. Although William Taft of the State Department did write a dissenting memo and Colin Powell did have a chance to see President Bush and force a NSC meeting, the decision had already been made. The leak of the rebuttal of Powell's argument immediately before the NSC meeting undermined any chance of a serious consideration of the decision.

Iraq War Policy: Two Decisions

The next two decisions to be considered are President Bush's decision to go to war in Iraq and the decision to disband the Iraqi army made by Paul Bremer in May 2003. Both of these decisions had historic effects. The war in Iraq took essential resources away from the war against al-Qaeda and the Taliban in Afghanistan and alienated many of the nations of the world from U.S. policy. The decision to disband the Iraqi army undermined (and possibly doomed) the effort to maintain internal security in Iraq in the aftermath of the U.S. military victory in 2003. The momentous decision to go to war was not the subject of a formal decision-making process and the decision to disband the Iraqi army was slipped by President Bush without a conscious, deliberate decision by the president.

A. *The Decision to Go to War in Iraq*

The decision to invade Iraq seems to have been made over the course of a year or so and was characterized by incremental decision making along the way.

In the decision to go to war in Afghanistan, President Bush deliberated with his war cabinet and made the major decisions in a relatively short time period. In contrast, the decision to invade Iraq seems to have been made over the course of a year or so and was characterized by incremental decision making along the way. President Bush had probably made up his own mind about the war sometime early in 2002, but other members of his administration became aware of his decision at different times over the next year.

President Bush did not make public his decision to pursue Iraq until the State of the Union message on Jan. 29, 2002, though even then he was somewhat vague about the way in which he stated his intention. (In November 2001 he had ordered Donald Rumsfeld to prepare operational plans for a war against Iraq.) Bush announced his decision with a high level of generality with his inclusion of Iraq, Iran and North Korea in what he called an “axis of evil.” In the speech Bush declared: “I will not wait on events while dangers gather. I will not stand by as peril draws closer and closer” (Bush 2002a). In April, the administration started talking about “regime change” in Iraq, and Bush told a British reporter, “I made up my mind that Saddam needs to go” (Woodward 2004, 119).

According to State Department Director of Policy and Planning Richard Haass (who had worked on the NSC staff on Middle East issues for George H. W. Bush), Condoleezza Rice told him that the president had made up his mind by July 2002. Haass said that he broached the issue of war with Iraq with Rice: “I raised this issue about were we really sure that we wanted to put Iraq front and center at this point, given the war on terrorism and other issues. And she said, essentially, that that decision’s been made, don’t waste your breath” (Lemann 2003, 36).

On Aug. 5, 2002, at Powell’s initiative, Rice arranged for him to spend two hours with the president in order to explain his own reservations about war with Iraq. He argued that war with Iraq would destabilize the whole Middle East; an American occupation would be seen as hostile by the Muslim world; and an invasion of Iraq should not be undertaken by the United States unilaterally. Powell didn’t think the president understood the full implications of an American invasion. He told the president that if the United States invaded Iraq, it would tie down most of the army and the United States would be responsible for twenty-five million people: “You will become the government until you get a new government” (Woodward, 2004, 150-151).

The relative informality of the decision-making process is illustrated by the way the president informed his secretary of state that he had made up his mind. The president asked Rice and White House counselor Karen Hughes their opinion about going to war with Iraq, but he didn’t ask Powell his opinion. Once he finalized the decision to go to war, Bush immediately informed Rumsfeld, but not Powell. In fact, the president informed Prince Bandar, the Saudi Arabian ambassador to the United States, of his decision before he informed Powell

(Woodward 2004, 151-152, 165). The president had to be prompted by Rice to inform Powell that he had made up his mind to go to war. So, on Jan. 13 the president brought Powell in for a 12-minute meeting to inform him of the decision to go to war and ask him to support his decision. The president stressed that it was a “cordial” conversation and that “I didn’t need his permission” (Woodward 2004, 269-274). The deliberations about war were not definitive enough or inclusive enough for the secretary of state (the only NSC principal with combat experience) to know that President Bush had made the decision.

Paul Pillar, National Intelligence Director for the Near East and South Asia from 2001 to 2005, noted “. . . the absence of any identifiable process for making the decision to go to war – at least no process visible at the time. . . . There was no meeting, no policy-options paper, no showdown in the Situation Room when the wisdom of going to war was debated or the decision to do so made” (Pillar 2007, 55). CIA Director George Tenet agreed: “There was never a serious debate that I know of within the administration about the imminence of the Iraqi threat,” or even a “significant discussion” about options for continuing to contain Iraq (Shane and Mazzetti, 2007).

The seeming lack of deliberation is striking. Though there were many meetings on tactical and operational decisions, there seemed to be no meetings where the entire NSC engaged in face-to-face discussions of all the options, including the pros and cons of whether or not to go to war. In part, this may have been due to the shift in Rice’s role away from the honest broker role she played in the decisions about Afghanistan. According to John Burke, in the decisions about Iraq, Rice did not act as a broker (Burke 2005b). Instead, the president decided to use her talents as a confidant and articulator of his views.

In addition to the lack of deliberation, President Bush chose to ignore important human intelligence sources at the highest levels of Saddam’s government. The French had recruited Naji Sabri, Saddam’s foreign minister, who told them that Saddam had no WMD (Drumheller 2006; Pfiffner 2008b). The British had recruited Saddam’s intelligence chief, Tahir Jalil Habbush, who told them Saddam had no WMD. Reports of each of these two intelligence breakthroughs reached President Bush who decided that they were not relevant to his plans for war (Suskind 2008, 179-196).

In making the decision to invade Iraq, the administration might well have benefited from a more thorough deliberation of the issues, similar to the war cabinet meetings before the decision to invade Afghanistan. By contrast, he did not seem to fully consider dissenting opinions like those of Powell, Haass, or Brent Scowcroft (National Security Adviser to George H.W. Bush) when making his decision on Iraq. Bush and his neoconservative advisers were committed to regime change in Iraq for a variety of reasons and thus did not feel that an open process of deliberation would suit their purpose. President Bush was undoubtedly aware of disagreements about his intention to go to war, but most

of these came from outside the administration. The only serious reservation expressed to Bush from within was voiced by Colin Powell during the dinner with President Bush in August 2002.

B. CPA Order Number 2: Disbanding the Iraqi Army

Early in the occupation of Iraq, two key decisions were made that gravely jeopardized U.S. chances for success in Iraq: 1) the decision to bar from government work those who ranked in the top four levels of Saddam's Baath Party and the top three levels of each ministry; 2) the decision to disband the Iraqi Army and replace it with a new army built from scratch. These two fateful decisions were made against the advice of military and CIA professionals and without consulting important members of the president's staff and Cabinet.

Both of these decisions fueled the insurgency by: 1) alienating hundreds of thousands of Iraqis who could not support themselves or their families; 2) undermining the normal infrastructure necessary for social and economic activity; 3) ensuring that there was not sufficient security to carry on normal life, and 4) creating insurgents who were angry at the United States, many of whom had weapons and were trained to use them. Before examining the disbanding order, a key decision should be mentioned.

The decision to give Paul Bremer sole authority in Iraq without the co-representative of the president, Zal Khalilzad, as had been planned, was made by the president during an informal lunch with Bremer. The decision to make Bremer, in effect, the Viceroy of Iraq was made without consulting his Secretary of State or National Security Adviser (Gordon and Trainor 2006, 475). According to Colin Powell, "The plan was for Zal to go back. He was the one guy who knew this place better than anyone. I thought this was part of the deal with Bremer. But with no discussion, no debate, things changed. I was stunned." Powell observed that President Bush's decision was "typical." There were "no full deliberations. And you suddenly discover, gee, maybe that wasn't so great, we should have thought about it a little longer" (Cohen 2007).

The decision by Bush to put Bremer fully in charge led to the first of the two blunders. In his de-Baathification order (Coalition Provisional Authority Order Number 1 of May 16, 2003), Bremer ordered that all senior party members were banned from serving in the government and the top three layers of all government ministries were removed, even if they were not senior members of the Baath Party. This included up to 85,000 people who, in Bremer's eyes, were "true believers" and adherents to Saddam's regime (Bremer 2006, 39; Ricks 2006, 160). The problem was that these mid-level technocrats constituted the professional capacity that was essential to running the electrical, transportation, education, and communications infrastructure of Iraq. The decision threw many thousands of Iraqis out of work and contributed significantly to Iraqi resentment of the U.S. occupation.

But more important than the de-Baathification of civilian agencies of the Iraqi government was the disbanding of the Iraqi Army. President Bush had agreed with military planners that the Army was essential for the internal and external security of the country. Jay Garner had briefed National Security Adviser Rice on the plans on Feb. 19, and the president was briefed in an NSC meeting on March 10; there was a general consensus that the Iraqi army was essential to post-war security (Ricks 2006, 160, Gordon and Trainor 2006, 492). The story of how President Bush's March decision got reversed is a tangled one, with many major participants trying to deflect responsibility from themselves.

Paul Bremer, against the advice of the Army and the professional planners, issued CPA Order Number 2 on May 23, 2003, which dissolved the Iraqi security forces. The security forces included 385,000 in the armed forces, 285,000 in the Interior Ministry (police), and 50,000 in presidential security units (Ricks 2006, 162, 192). Of course those in police and military units (e.g. the Special Republican Guard) that were Saddam's top enforcers had to be barred from working in the government. But many officers in the Army were professional soldiers, and the rank-and-file enlisted soldiers constituted a source of stability and order. Bremer's decision threw hundreds of thousands out of work and immediately created a large pool of unemployed and armed men who felt humiliated and hostile to the U.S. occupiers. According to one U.S. officer in Baghdad, "When they disbanded the military, and announced we were occupiers - that was it. Every moderate, every person that had leaned toward us, was furious" (Ricks 2006, 164) The prewar plans of the State Department, the Army War College, and the Center for International and Strategic Studies had all recommended against disbanding the army (Fallows 74).

In disbanding most of the Iraqi bureaucracy, Bremer ignored Max Weber's insight from a century ago: "A rationally ordered system of officials [the bureaucracy] continues to function smoothly after the enemy has occupied the area; he merely needs to change the top officials. This body of officials continues to operate because it is to the vital interest of everyone concerned, including above all the enemy" (Weber 1946, 229).

In an NSC meeting on March 12, 2003, there was a consensus that the U.S. forces would use the Iraqi Army to help provide internal and external security in post-war Iraq (Gordon 2008). Yet on May 23, CPA head Paul Bremer issued CPA Order Number 2 that "dissolved" the Ministry of Defense, the military services, the national assembly, and many other organizations central to Iraq under Saddam. How did this crucial reversal come about?

Paul Bremer and Walt Slocombe planned to disband the security forces and create "an entirely new Iraqi army" (Feith 2008, 432). They worked on the policy when they were working in the Pentagon, and according to Bremer, Rumsfeld approved an outline of the plans on May 9 (Bremer 2006 54; Feith 208, 428; Gordon 2008). On May 19 Bremer, in a memo, updated Rumsfeld about the final

form of the plan (Bremer 2007, 57; Feith 2008, 432). The authority for the order seemed to come from the White House; Bremer told Garner that the decision was made “at a level ‘above Rumsfeld’s pay grade’” (Tenet 2007, 429).

After Feith reviewed the draft order on May 22, Bremer sent President Bush a three-page letter which was an update on conditions in Iraq. Near the end of the letter he mentioned that he was going to dissolve “Saddam’s military and intelligence structures” (Andrews 2007). In the NSC meeting that same day Bremer “informed the president of the plan in a video teleconference” (Bremer 2007, 57). President Bush did not formally decide to reverse his decision of March 12, and Bremer interpreted his lack of questions as approval. Bremer later said “I don’t remember any particular response from that meeting. If there had been an objection, I would have made note of it then” (Gordon 2008). Bremer also recalled: “I might add that it was not a controversial decision.” The Iraqi Army had disappeared” (Andrews 2007). Bremer concluded that “it was fairly clear that the Iraqi Army could not be reconstituted, and the president understood that” (Andrews 2007).

Bremer’s impression that Bush had approved his order was reinforced in a May 23 letter that Bush wrote to Bremer (the day of the proclamation): “Your leadership is apparent. You have quickly made a positive and significant impact. You have my full support and confidence” (Andrews 2007). Despite Bremer’s contention that the decision had been fully briefed and vetted by all necessary parties, others did not remember things the same way.

The decision by Bremer, seemingly approved by President Bush at the May 22 NSC meeting, was seen by other participants in policy making on Iraq as having been slipped by President Bush without the necessary vetting by other responsible parties in the government. Franklin C. Miller, a participant in NSC planning for postwar Iraq said, “Anyone who is experienced in the ways of Washington knows the difference between an open, transparent policy process and slamming something through the system. . . . The most portentous decision of the occupation was carried out stealthily and without giving the president’s principal advisers an opportunity to consider it and give the president their views” (Gordon 2008).

Importantly, Colin Powell was out of town (as he was when the Geneva decision was initially made) when the decision was made, and he was not informed about it, much less consulted. One might expect that the Secretary of State would have had the opportunity to comment on such an important policy change, but he was left out entirely. Powell later recalled: “I talked to Rice and said, ‘Condi, what happened?’ And her reaction was: ‘I was surprised too, but it is a decision that has been made and the president is standing behind Jerry’s decision. Jerry is the guy on the ground.’ And there was no further debate about it” (Gordon 2008). The irony is that Powell, aside from being Secretary of State, was the only one of the principals with combat experience. Bremer had not had

any experience in the military, occupying countries, or the Middle East; and he had been “on the ground” for only 11 days (this was his first time in Iraq) when he gave the order. The order greatly upset military commanders who had not been consulted and who had planned all along to use most of the Iraqi Army to help stabilize Iraq after the invasion.

The order had not been cleared through any normal policy process. Feith admitted he did not bring it up in the deputies meetings (Feith 2008, 433) but said that he had “received detailed comments back from the JCS” (Andrews 2007). But Richard B. Myers, chair of joint chiefs then, said: “I don’t recall having a robust debate about this issue, and I would have recalled this” (Gordon 2008). In Iraq, Army Col. Greg Gardner, was tasked by Slocombe to get General McKiernan’s (then head of coalition forces in Iraq) reaction to the plan the day before it was issued (McKiernan was at Baghdad airport, while Bremer was in the Green Zone). Gardner said that a member of McKiernan’s staff told him over the phone that McKiernan accepted the policy decision (Gordon 2008). McKiernan, however, denies that he was consulted: “I never saw that order and never concurred. That is absolutely false.” Gen. Peter Pace, vice chair of JCS said, “We were not asked for a recommendation or for advice” (Andrews 2007). Central Command in Florida was also surprised by the decision (Ricks 2006, 163). Paul Pillar, National Intelligence Officer for the Near East and South Asia, said that the intelligence community was not consulted about the decision (Ferguson 2008, 219).

Bremer’s response to the above issues was: “It is not my responsibility to do inter-agency coordination” (Gordon 2008).

President Bush himself was vague on whether he had made the decision to reverse the March 12 NSC consensus. When asked in 2006 by his biographer, Roger Draper, about the decision, Bush replied “Well, the policy was to keep the army intact. Didn’t happen” (Draper 2007, 211, 433). According to Edmund Andrews, Bush said: “Yeah, I can’t remember, I’m sure I said, ‘This is the policy, what happened?’ ” (Andrews 2007).

Since the official records of communications and meetings at the time of the decision are still secret, there is no way to know for certain how the decision was finally made. But what is known is that the decision was made against the judgment of military planners and without consultation with: Secretary of State Colin Powell, Chair of the Joint Chiefs of Staff General Richard Myers, Vice Chair of JCS Peter Pace, Lt. General David D. McKiernan, CIA Director George Tenet or Intelligence Community director for the Middle East Paul Pillar.

CONCLUSION

The pattern that emerges from an examination of these four decisions is one of secrecy, top-down control, tightly held information, disregard for the judgments

of career professionals and the exclusion from deliberation of qualified executive branch experts who might have disagreed with those who initially framed the decisions. Secretary of State Colin Powell, particularly, was marginalized by the White House staff and the Vice President. Powell arguably had more relevant experience than any of the other NSC principals: combat experience in Vietnam (two tours), Chairman of the Joint Chiefs of Staff under presidents George H.W. Bush and Clinton, National Security Adviser to President Reagan, and Secretary of State to President Bush.

It is also clear in these cases of decision making that National Security Condoleezza Rice did not play the role of neutral broker, nor did she effectively coordinate among the National Security Council principals. It must be admitted that she was at a disadvantage, with a Vice President who dominated the national security process, a Secretary of Defense who disdained her, and a president who wanted to use her as a personal confidant rather than as broker among the NSC principals. Nevertheless, someone should have ensured that President Bush received the frank advice of those at the top levels of his administration who might have had different perspectives than Vice President Cheney.

Another pattern from these examples is the exclusion of career professionals, military and civilian, from rendering their advice to top-level decision makers and whose advice was most often ignored when they did manage to express their judgments. Career military lawyers were excluded from the military commissions order until the last minute, and their hasty advice was rejected. Lawyers in the State and Defense Departments objected to the decision to suspend the Geneva Conventions, but they had no effect. The decision to disband the Iraqi army was made contrary to the consensus of military judgment that had been heard by the president months before he reversed his previous decision. On the decision to go to war in Iraq, many Army generals had reservations (in addition to their concerns about the number of troops needed), but they considered the decision to be the commander in chief's and did not forcefully express their views.

The above problems were exacerbated by the failure of the president to bring together his major staffers and departmental secretaries and deliberate about the wisdom of his decisions. The military commissions order was tightly held and secret from most of the relevant experts in the administration. The decision to disband the Iraqi army was made casually, with no consultation with military leaders or Powell. Bush did call an NSC meeting on the Geneva Conventions, but it was held after he had made up his mind.

The decision to go to war in Iraq was never considered in a formal meeting of the National Security Council principals.

Arguably the four decisions examined in this paper were unwise. The military commissions order designed a flawed process that was invalidated by

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the Supreme Court. The suspension of the Geneva Conventions led to the abuse and torture of detainees. The decision to disband the Iraqi army made it impossible for the United States to provide internal security in Iraq during the occupation. And the decision to go to war in Iraq led to the opprobrium of other nations of the world, the increased power of Iran, the increased recruitment of Muslim radicals who want to harm the United States, the neglect of the war against al-Qaeda in Afghanistan, the degradation of the readiness of the U.S. Army and expenditures approaching \$1 trillion dollars.

As stated in the introduction, broader consultation would not necessarily have led to different decisions by President Bush, but listening to dissent from his own political appointees and the considered judgment of career professionals might have exposed him to alternative judgments about the consequences of his decisions.

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¹ Daniel Benjamin served on the NSC staff from 1994-1999.

² Janis analyzes the Bay of Pigs invasion in 1961 and the escalation of the Vietnam War in 1965 to illustrate the syndrome. He examines the Cuban Missile Crisis and the Marshall Plan as instances when groupthink was avoided.

³ Roger Porter served more than 10 years on the White House staff; He was Executive Secretary of the President's Economic Policy Board during the Ford administration, Director of the White House Office of Policy Development in the Reagan administration, and Assistant to the President for Economic and Domestic Policy in the George H.W. Bush administration.

⁴ Scott McClellan said in his book: "Bush showed Cheney great deference, especially when he designated him to take on a specific task, such as . . . the controversial warrantless wiretapping program instituted after 9/11. Bush also relied on Cheney's ability to shape what Bush considered vital national security policies on matters such as al Qaeda detainees." (McClellan 2008, 85).

⁵ *Hamdan v. Rumsfeld* (2006), No. 05-184, Slip Opinion.