

# **A Compelling Case for Impeachment of President George W. Bush**

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## **For Severe Human Rights Violations, Breaches of Trust, Abuses of Power Injurious to the Nation, War Crimes, Misleading Congress and the American People About Nuclear Threats and the Case for War, and Grave Violations of Treaties, the United States Constitution, and Domestic Statutory Law**

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Impeachment of the President of the United States is not to be undertaken, as in the case of Andrew Johnson, simply because of partisan disagreements regarding policies or presidential appointments, or, as in the case of Bill Clinton, because of a partisan desire to exploit a personal violation of the law not involving grave breaches of official responsibilities or serious abuses of power.<sup>1</sup> However,

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<sup>1</sup> Offenses, such as perjury about an extramarital affair, are not remotely what our nation's founders had in mind when they provided for impeachment.

In short, only offenses of a public nature that harm the state were considered sufficiently grave to warrant impeachment. An early draft of the impeachment clause ended with the phrase "against the United States," which was removed as a matter of style without apparent intent to change the meaning. Iredell told the North Carolina convention that the "occasion [for the exercise of impeachment] will arise from acts of great injury to the community; Governor Johnston said that impeachment "is a mode of trial pointed out for great misdemeanors against the public." Finally, Madison spoke in the first Congress about presidential impeachment for "high crimes and misdemeanors against the United States," perhaps subconsciously referring back to the earlier draft of the impeachment clause. (Footnotes omitted.)

impeachment and removal from office, a vital protection against evisceration of the balance of power among the three branches of government and against betrayals of trust and abuses of power injurious to our nation, should be pursued when, as in the case of George W. Bush, a president misleads Congress and the American people in taking our nation to war; authorizes and supports the kidnapping, incarceration without charge, and torture of human beings; demonstrates contempt for the rule of law and for specific laws passed by the United States Congress; and blatantly violates fundamental constitutional protections afforded citizens of the United States.<sup>2</sup>

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Ed Firmage, "The Substantive Law of Presidential Impeachment," 1973 Utah Law Review 681, 693-94 (1973).

<sup>2</sup> Several polls reflect enormous popular support to impeach. In an October 2005, Ipsos Public Affairs poll, 50% of respondents agreed with the statement: "If President Bush did not tell the truth about his reasons for going to war with Iraq, Congress should consider holding him accountable by impeaching him." 44% disagreed. [www.afterdowningstreet.org/?q=node?3528](http://www.afterdowningstreet.org/?q=node?3528). In a November 2005 Zogby International poll, by a margin of 53% to 42%, Americans wanted Congress to impeach President Bush if he lied about the war in Iraq. [www.impeachpac.org/?q=node/6](http://www.impeachpac.org/?q=node/6).

Impeachment need not be based on a violation of criminal law. In fact, it usually is not.

Less than one-third of the eighty-three articles the House has adopted have explicitly charged the violation of a criminal statute or used the word "criminal" or "crime" to describe the conduct alleged, and ten of the articles that do were those involving the Tenure of Office Act in the impeachment of President Andrew Johnson. (Citation omitted.)

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Thus, the contention that articles of impeachment must be drawn in terms of indictable offenses cannot be supported.

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Clearly charges of constitutional violations and gross abuse of power for illegitimate purposes should be included as impeachable offenses regardless of the offender's office.

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Although frequently debated, and the negative advocated by some high authorities, it is now, we believe, considered that impeachment is not confined alone to acts which are forbidden by the Constitution or Federal statutes. The better sustained and modern view is that the provision for impeachment in the Constitution applies not only to high crimes and misdemeanors as those words were understood at common law but also acts which are not defined as criminal and made subject to indictment, and also to those which affect the public welfare. Thus an official may be impeached for offenses of a political character and for gross betrayal of public interests. Also for abuses or betrayal of trusts, for

Our nation’s moral standing in the world, our nation’s principled commitment to basic freedoms and individual rights, our nation’s essential democracy – all now depend upon a conscientious, non-partisan determination that our representatives in Congress will, with integrity and without partisan bias, make it clear, for our nation’s sake now and in the future, that a president will not be permitted to hold the office he has abused by egregiously violating the trust, the laws, and the essential principles of a nation that has, since its founding, prided itself in fighting against the sort of tyranny, cruel immorality, and disdain for the rule of law exemplified by George W. Bush and several members of his administration.

The invasion and occupation of Iraq has been tragic at every level. More than three thousand American lives have been taken; tens of thousands of US servicemen and servicewomen have suffered serious injuries; hundreds of thousands of innocent Iraqis have been killed and maimed; many billions of dollars have been wasted; our nation is viewed throughout much of the world as a rogue nation that ignores with impunity international law and basic principles of decency; and the future safety and security of our children and grandchildren have been placed at great risk because of the increasing hatred and resentment toward our country in much of the Muslim world arising from what is reasonably perceived as an occupation of a Muslim nation.

Our nation was led into this tragedy through dishonesty – either explicit lies or by means of withholding vital information – by President Bush and members of his administration. A few examples make clear the astounding violations of trust and totalitarian abuses of power by President Bush, each of them meriting impeachment and removal from office.

### **President Bush’s Fraud Concerning the Supposed Imminent Nuclear Threat Posed by Iraq**

On September 7, 2002, British Prime Minister Tony Blair and President Bush met with members of the press at Camp David. President Bush referred to a “new” report from the International Atomic Energy Agency allegedly stating,

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inexcusable negligence of duty, for the tyrannical abuse of power, or, as one writer puts it, for “a breach of official duties . . .” (Footnotes omitted.)

Firmage, *supra* note 1, at 696-98.

according to President Bush, that Iraq was “six months away” from building a nuclear weapon. “I don’t know what more evidence we need,” stated the President.<sup>3</sup>

He was lying. There was no such report.<sup>4</sup> In fact, numerous IAEA reports consistently denied any indication that Iraq had *any* nuclear capability,<sup>5</sup> and the

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<sup>3</sup> Remarks by the President and Prime Minister Tony Blair, Camp David, Maryland, September 7, 2002. [www.whitehouse.gov/news/releases/2002/09/20020907-2.html](http://www.whitehouse.gov/news/releases/2002/09/20020907-2.html).

<sup>4</sup> John R. MacArthur, publisher of *Harper’s Magazine*, described how the media was complicit in conveying such lies to the American people in the May/June 2003 issue of *Columbia Journalism Review*:

[T]he success of “Bush’s PR War” . . . was largely dependent on a compliant press that uncritically repeated almost every fraudulent administration claim about the threat posed to America by Saddam Hussein.

[T]here was a disinformation campaign aimed at the people and Congress. Just a few columnists seriously challenged the White House advertising assault. Looking back over the debris of half-truths and lies, I can’t help but ask . . . where was the American press on September 7, 2002, a day we were sorely in need of reporters?

It was then that the White House propaganda drive began in earnest, with the appearance before television cameras of George Bush and Tony Blair at Camp David. Between them, the two politicians cited a “new” report from the UN’s International Atomic Energy Agency that allegedly stated that Iraq was “six months away” from building a nuclear weapon. “I don’t know what more evidence we need,” declared the President.

For public relations purposes, it hardly mattered that no such IAEA report existed, because almost no one in the media bothered to check out the story. . . .

Millions of people saw Bush tieless, casually inarticulate, but determined-looking and self-confident, making a completely uncorroborated (and, at that point, uncontradicted) case for preemptive war. . . . [W]e might ask ourselves why no more evidence was needed than the President’s say-so – and why no reporters asked for any.

<sup>5</sup> The April 7, 1999, IAEA Report noted that, following an intensified schedule of inspections from November 17 to December 13, 1998, “Iraq provided the necessary level of cooperation to enable those activities to be completed efficiently and effectively.” After a total of more than 90 inspections at “capable sites,” “[n]o indication of prohibited equipment, materials or activities was detected in the course of the inspections.” An earlier IAEA report, dated January 30, 1999, had likewise concluded as follows:

The IAEA’s extensive verification activities in Iraq, since May 1991, have yielded a technically coherent picture of Iraq’s clandestine nuclear programme. These verification activities have revealed no indication that Iraq possesses nuclear weapons or any meaningful amounts of weapon-usable nuclear material, or that Iraq has retained any practical capability (facilities or hardware) for the production of such material.”

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The October 7, 1998, IAEA Report states:

The number of inspections carried out under the Agency's ongoing monitoring and verification (OMV) plan since the Nuclear Monitoring Group was established in August 1994 now totals almost 1,540. The majority of those inspections were carried out with no prior announcement; a number of them were conducted in cooperation with the monitoring groups of the United Nations Special Commission (UNSCOM). No indication of prohibited materials, equipment or activities was detected during the inspections.

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The verification activities have revealed no indications that Iraq had achieved its programme objective of producing nuclear weapons or that Iraq had produced more than a few grams of weapon-usable nuclear material or had clandestinely acquired such material. Furthermore, there are no indications that there remains in Iraq any physical capability for the production of weapon-usable nuclear material of any practical significance. In February 1994, IAEA completed the removal from Iraq of all weapon-usable nuclear material – essentially research reactor fuel – under IAEA safeguards.

The July 27, 1998, IAEA Report states:

IAEA, through its extensive programme of inspection in Iraq, has assembled a technically coherent picture of Iraq's clandestine nuclear programme and has taken actions to destroy, remove and render harmless the known components of the programme and to verify, through an extensive programme of excavation, the remnants of equipment and materials unilaterally destroyed by Iraq. These activities have provided the basis for IAEA's statement that there are no indications of Iraq having retained any physical capability for the indigenous production of weapon-usable nuclear material in amounts of any practical significance. . . . Furthermore, there are no indications that Iraq has achieved its programme's goal of producing nuclear weapons.

The April 7, 1998, IAEA Report states:

The Agency's ongoing monitoring and verification activities carried out since October 1997 have not revealed indications of the existence in Iraq of prohibited equipment or materials or of the conduct of prohibited activities. . . . Iraq has satisfactorily completed its undertaking to produce a consolidated version of its full, final and complete declaration of its clandestine nuclear programme.

The January 8, 2003, IAEA Report concludes:

We have already achieved good progress in re-establishing our knowledge of Iraq's nuclear capabilities.

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The Iraqi authorities have consistently provided access without conditions and without delay.

IAEA's chief spokesperson stated that no such report has been issued by the IAEA.<sup>6</sup>

## **President Bush's Outrageously Misleading Accusation That Iraq Had Sought to Purchase Uranium From an African Nation**

Our nation, as well as much of the rest of the world, had been traumatized by the events of 9/11. Many nations rallied to support the United States and looked to President Bush and America for moral leadership in this time of crisis. We relied upon our president for protection and for an honest assessment of the threats we

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To date, no evidence of ongoing prohibited nuclear or nuclear-related activities has been detected . . . .

<sup>6</sup> One news article described President Bush's false claim about an IAEA report, how his lie was compounded by false assertions by his Deputy Press Secretary, and the response of an IAEA spokesman, as follows:

The International Atomic Energy Agency says that a report cited by President Bush as evidence that Iraq in 1998 was "six months away" from developing a nuclear weapon does not exist.

"There's never been a report like that issued from this agency," Mark Gwozdecky, the IAEA's chief spokesman, said yesterday in a telephone interview from the agency's headquarters in Vienna, Austria.

"We've never put a time frame on how long it might take Iraq to construct a nuclear weapon in 1998," said the spokesman of the agency charged with assessing Iraq's nuclear capability for the United Nations.

In a Sept. 7 news conference with British Prime Minister Tony Blair, Mr. Bush said: "I would remind you that when the inspectors first went into Iraq and were denied – finally denied access [in 1998], a report came out of the Atomic – the IAEA that they were six months away from developing a weapon.

"I don't know what more evidence we need," said the president, defending his administration's case that Iraqi leader Saddam Hussein was building weapons of mass destruction.

The White House says Mr. Bush was referring to an earlier IAEA report.

"He's referring to 1991 there," said Deputy Press Secretary Scott McClellan. "In '91, there was a report saying that after the war they found out they were about six months away."

Mr. Gwozdecky said no such report was ever issued by the IAEA in 1991.

Joseph Curl, "Agency Disavows Report on Iraq Arms," *Washington Times*, September 27, 2002.

were facing.<sup>7</sup> President Bush betrayed the tremendous trust bestowed upon him by misleading us, and our Congress, by instilling in many of us the fear that Saddam Hussein was seeking to purchase nuclear materials from an African nation. In fact, however, much of the US intelligence community disagreed.<sup>8</sup> Just as an issuer of stock defrauds investors by withholding material information about a corporation, so too did President Bush defraud our Congress, our country, and much of the international community by failing to disclose information that was provided to him and which was contrary to his representations about Hussein's supposed efforts to build nuclear weapons.

In his January 28, 2003, State of the Union message, President Bush stated: "The British government has learned that Saddam Hussein recently sought

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<sup>7</sup> An honest assessment of the threats posed to the US by Iraq had been provided by both then-National Security Adviser Condoleezza Rice and then-Secretary of State Colin Powell, *before* they, along with President Bush, engaged in a campaign to mislead Congress and the American people in support of the illegal invasion and occupation of Iraq. Before 9/11, and before the campaign to drum up support for war began, Colin Powell stated as follows:

**"He [Saddam Hussein] has not developed any significant capability with respect to weapons of mass destruction. He is unable to project conventional power against his neighbors."** (Emphasis added.)

Statement of Colin Powell, Cairo, Egypt, February 24, 2001.  
([www.state.gov/secretary/former/powell/remarks/2001/933.htm](http://www.state.gov/secretary/former/powell/remarks/2001/933.htm).)

On July 29, 2001, Condoleezza Rice, appearing on *CNN Late Edition With Wolf Blitzer*, stated, **"We are able to keep arms from him [Saddam Hussein]. His military forces have not been rebuilt."** (Emphasis added.) <http://transcripts.cnn.com/TRANSCRIPTS/0107/29/le.00.html>.

<sup>8</sup> A draft of a speech President Bush was going to give in Cincinnati on October 7, 2003, included the claim that "[t]he [Iraqi] regime has been caught attempting to purchase substantial amounts of uranium oxide from sources in Africa." Walter Pincus, "Bush Team Kept Airing Iraq Allegation," *Washington Post*, August 8, 2002, p. A10. Before the speech, on October 5 and 6, then-Deputy National Security Adviser Stephen Hadley (now Condoleezza Rice's successor as National Security Adviser) received two memoranda from the CIA expressing the CIA's reservations about the Niger claim. Then, CIA Director George Tenet called Hadley, informing him that the claim was unsound. Tenet successfully convinced the White House to delete the claim from the Cincinnati speech. Associated Press, "White House Official Apologizes for Role in Uranium Claim," *New York Times*, July 22, 2003. Nothing was said about those reservations concerning the claim when it was made during the State of the Union Address less than four months later.

significant quantities of uranium from Africa.”<sup>9</sup> He obviously limited his statement to what “the British government” supposedly had learned because he knew, but did not disclose, that our own intelligence services disagreed with the statement.<sup>10</sup>

In an October 2002 National Intelligence Estimate (NIE), presented at a White House background briefing on weapons of mass destruction in Iraq, “Key Judgments” included an assessment “that Saddam does not yet have nuclear weapons or sufficient material to make any.” President Bush failed to disclose that assessment to Congress and the American people. To make matters worse, he did not disclose the State Department’s Bureau of Intelligence and Research (INR) conclusion in the October 2002 NIE, that:

[T]he claims of Iraqi pursuit of natural uranium in Africa are, in INR’s assessment, highly dubious.

The failure by President Bush to disclose that conclusion to Congress and to the American people rendered his statement about Hussein seeking to purchase uranium from an African country materially misleading.<sup>11</sup> Under these circumstances, that is clearly an impeachable offense.<sup>12</sup>

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<sup>9</sup> He didn’t say the British government “thought,” “believed,” or “asserted;” he said it had “learned,” representing to Congress and the American people that Hussein, in fact, sought uranium from Africa.

<sup>10</sup> In fact, if a competent inquiry had been made, it would have been discovered that the “British government” information was based on no more than the facts that an Iraqi diplomat visited Niger in 1999 and that almost three-quarters of Niger’s exports were uranium (Raymond Whitaker, “Butler ‘wrong’ on Iraq uranium link,” *Independent on Sunday*, July 25, 2004) – hardly the sort of “intelligence” justifying an assertion by the President of the United States that the world is at risk of a nuclear attack and justifying a preemptive war of aggression against a nation that, as it turned out, had no weapons of mass destruction.

<sup>11</sup> President Bush also failed to disclose that, upon request for an authoritative judgment by the Pentagon, the National Intelligence Council, a coordinating body for the 15 agencies that constituted the US intelligence community, reported in a January 2003 memo, that the Niger story was baseless. Barton Gellman and Dafna Linzer, “A ‘Concerted Effort’ to Discredit Bush Critic,” *Washington Post*, April 9, 2006. (“[T]he Pentagon asked for an authoritative judgment from the National Intelligence Council, the senior coordinating body for the 15 agencies that then constituted the U.S. intelligence community. Did Iraq and Niger discuss a uranium sale, or not? If they had, the Pentagon would need to reconsider its ties with Niger. The council’s reply, drafted in a January 2003 memo by the national intelligence officer for Africa, was unequivocal: The Niger story was baseless and should be laid to rest. Four U.S. officials with firsthand

## **President Bush's Dishonest Claim That Saddam Was Purchasing Aluminum Tubes to Make Nuclear Weapons**

The fraud about Hussein building up a nuclear capability did not stop with the phony Niger story. During September 2002, Condoleezza Rice and President Bush represented to the public that Hussein was purchasing aluminum tubes to enrich uranium for a nuclear weapon.<sup>13</sup> The next month, a National Intelligence Estimate (NIE) was delivered to the President. That document virtually screams out the view of various intelligence agencies that the tubes were of no use in a

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knowledge said in interviews that the memo . . . arrived at the White House as Bush and his highest-ranking advisers made the uranium story a centerpiece of their case for the rapidly approaching war against Iraq.”)

<sup>12</sup> James Iredell argued in the North Carolina ratifying convention that the withholding of material information from Congress in a matter that causes injury to the nation would be an impeachable offense:

**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. With respect to the impeachability of the Senate, that is a matter of doubt. (Emphasis added.)**

3 J. Elliot, *The Debates in the Several State Conventions* 127 (1937).

<sup>13</sup> On Late Edition with Wolf Blitzer, CNN (Sept. 8, 2002), Condoleezza Rice stated, “We do know that there have been shipments going . . . into Iraq . . . of aluminum tubes that really are only suited to – high-quality aluminum tools [sic] that are only really suited for nuclear weapons programs, centrifuge programs.” <http://transcripts.cnn.com/TRANSCRIPTS/0209/08/le.00.html>. At the United Nations General Assembly on September 12, 2002, President Bush stated, “Iraq has made several attempts to buy high-strength aluminum tubes used to enrich uranium for a nuclear weapon.” Remarks by the President in Address to the United Nations General Assembly, New York, New York, September 12, 2002. [www.whitehouse.gov/news/releases/2002/09/print/20020912-1.html](http://www.whitehouse.gov/news/releases/2002/09/print/20020912-1.html).

nuclear program.<sup>14</sup> That did not stop President Bush, however, from stating in a major speech the next month that “Iraq has attempted to purchase high-strength aluminum tubes and other equipment needed for gas centrifuges, which are used to enrich uranium for nuclear weapons.”<sup>15</sup>

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<sup>14</sup> Included in the NIE are the following statements, none of which were mentioned to Congress, the American people, or the international community as President Bush and top members of his administration were touting the aluminum tubes as proof of Iraq’s nuclear program:

**DOE (Department of Energy) agrees that reconstitution of the nuclear program is underway but assesses that the tubes probably are not part of the program.**  
(Emphasis added.)

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**State/INR (State Department’s Bureau of Intelligence and Research) Alternative View of Iraq’s Nuclear Program**

The Assistant Secretary of State for Intelligence and Research (INR) believes that Saddam continues to want nuclear weapons and that available evidence indicates that Baghdad is pursuing at least a limited effort to maintain and acquire nuclear weapon-related capabilities. **The activities we have detected do not, however, add up to a compelling case that Iraq is currently pursuing what INR would consider to be an integrated and comprehensive approach to acquire nuclear weapons.** Iraq may be doing so, but INR considers the available evidence inadequate to support such a judgment. **Lacking persuasive evidence that Baghdad has launched a coherent effort to reconstitute its nuclear weapons program,** INR is unwilling to speculate that such an effort began soon after the departure of UN inspectors or to project a timeline for the completion of activities it does not now see happening. As a result, INR is unable to predict when Iraq could acquire a nuclear device or weapon.

**In INR’s view Iraq’s efforts to acquire aluminum tubes is central to the argument that Baghdad is reconstituting its nuclear weapons program, but INR is not persuaded that the tubes in question are intended for use as centrifuge rotors. INR accepts the judgment of technical experts at the U.S. Department of Energy (DOE) who have concluded that the tubes Iraq seeks to acquire are poorly suited for use in gas centrifuges to be used for uranium enrichment and finds unpersuasive the arguments advanced by others to make the case that they are intended for that purpose.** INR considers it far more likely that the tubes are intended for another purpose, most likely the production of artillery rockets. The very large quantities being sought, the way the tubes were tested by the Iraqis, and the atypical lack of attention to operational security in the procurement efforts are among the factors, in addition to the DOE assessment, that lead **INR to conclude that the tubes are not intended for use in Iraq’s nuclear weapon program.** (Emphasis added.)

<sup>15</sup> Speech by President George W. Bush in Cincinnati, Ohio, October 7, 2002.

In a January 9, 2003 report to the UN Security Council, the IAEA reported that the aluminum tubes were not directly suitable for the manufacture of centrifuges.<sup>16</sup> Again, not allowing the findings of the IAEA or of various US intelligence agencies to get in the way of his fraud upon Congress and the American people, President Bush outrageously represented in his State of the Union Message on January 28, 2003 that “Our intelligence sources tell us that [Saddam] has attempted to purchase high-strength aluminum tubes suitable for nuclear weapons production.” No greater cause for impeachment can be imagined than misleading our Congress and misleading the American people about whether we are facing a nuclear threat while leading our nation to a tragic, illegal war of aggression.

The fraud was dramatically compounded when a so-called summary of the NIE was distributed to Congress, stating, misleadingly, as follows: “**All intelligence experts agree** that Iraq is seeking nuclear weapons and that these tubes could be used in a centrifuge enrichment program.” (Emphasis added.) Clearly, that statement was false. The DOE and INR dissents, which expressed the accurate situation, were omitted. That omission also rendered the representation to Congress, and to the public, false and misleading – a fraud clearly meriting impeachment and removal from office.

## **The Illegal War of Aggression Against Iraq**

The invasion and occupation of Iraq, by order of President Bush, is a blatant violation of US treaty obligations and, hence, of the US Constitution.<sup>17</sup>

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<sup>16</sup> “While the matter is still under investigation, and further verification is foreseen, the IAEA’s analysis to date indicates that the specifications of the aluminium tubes sought by Iraq in 2001 and 2002 appear to be consistent with reverse engineering of rockets. While it would be possible to modify such tubes for the manufacture of centrifuges, they are not directly suitable for it.” “Status of the Agency’s Verification Activities in Iraq As of 8 January 2003,” by IAEA Director General Dr. Mohamed ElBaradei.

<sup>17</sup> The Preamble to the United Nations Charter, provides, in part, as follows:

We the peoples of the United Nations **determined to save succeeding generations from the scourge of war**, which twice in our lifetime has brought untold sorrow to mankind, and **to reaffirm faith in fundamental human rights**, in the dignity and worth of the human person, **in the equal rights of men and women and of nations large and small, and to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained**, and to promote social progress and better standards of life in larger freedom, and for these **ends to practice tolerance and live**

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**together in peace with one another as good neighbors, and to unite our strength to maintain international peace and security, and to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest,** and to employ international machinery for the promotion of the economic and social advancement of all peoples, have resolved to combine our efforts to accomplish these aims. (Emphasis added.)

Of course, the invasion and occupation of a nation that posed no imminent threat to the security of the United States was contrary to every basic precept of the UN Charter preamble. Further, President Bush clearly violated the following specific provisions of the UN Charter, which is legally binding upon the US and its leaders:

**Article 2, Sections 3, 4:**

**All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered. . . . [and] refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.** (Emphasis added.)

President Bush's violent invasion and occupation of Iraq, costing hundreds of thousands of lives, causing hundreds of thousands of grievous injuries, and resulting in the dislocation of hundreds of thousands of men, women, and children, violated, and continues to violate, Article 2, Sections 3 and 4 quoted above. The violations were made all the more clear by President Bush's disregard of calls from UN Security Council members for a peaceful resolution.

**Article 39:**

**The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken** in accordance with Articles 41 and 42, to maintain or restore international peace and security. (Emphasis added.)

**Article 40:**

In order to prevent an aggravation of the situation, **the Security Council may, before making the recommendations or deciding upon the measures provided for in Article 39, call upon the parties concerned to comply with such provisional measures as it deems necessary or desirable....** (Emphasis added.)

**Article 41:**

**The Security Council may decide what measures not involving the use of armed force are to be employed** to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures.....

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Under Articles 39-50 of the UN Charter, no Member may use military force against another country without the UN Security Council determining that there has been a material breach of the UN Resolution and all nonmilitary and peaceful options to enforce the Resolution must be fully exhausted. Once the criteria for military action have been met, only the UN Security Council can authorize the use of military force. President Bush's orders to invade and occupy Iraq without meeting the criteria for military action, and without the approval of the UN Security Council, clearly violated the UN Charter. President Bush failed to take the issue to the Council, as he was required by law to do, because he certainly knew that a resolution to use force against Iraq would not be passed.

If there is any hope for the United Nations and international law to protect against aggressive wars, these provisions of the UN Charter must be honored. To permit President Bush to be unaccountable for his contemptuous disregard of the UN Charter would not only undermine the rule of law, but would set a disastrous precedent destroying the very essence of the UN Charter – to provide for the peaceful resolution of disputes between nations.

### **Article 51:**

Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take any time such action as it deems necessary in order to maintain or restore international peace and security.

Article 51 is intended to permit self-defense, but only until the Security Council is able to act to restore peace. President Bush can find no solace in the self-defense provision of Article 51. Iraq had not attacked the US and there was no evidence whatsoever indicating that it was about to do so.

### **The Kellogg-Briand Pact of 1928**

The Kellogg-Briand treaty, ratified by the United States in 1929, is as clear in its legal mandate today as it was during the war crimes trials in Nuremberg. A failure to hold President Bush accountable under that treaty would be a hypocritical repudiation of the international law principles to which the US and several other nations have committed. Very simply, all disputes must be resolved peacefully. The treaty specifically prohibits war as an instrument of foreign policy – which is about the *only* clear foreign policy of the Bush administration. In 1945, the Chief Prosecutor for Great Britain and Northern Ireland, Sir Hartley Shawcross, stated at the trial of German major war criminals in Nuremberg, Germany, as follows:

The Chief Prosecutor for the United States of America referred in his opening speech before this Tribunal to the weighty pronouncement of Mr. Stimson, the Secretary of War, in which, in 1932, he gave expression to the drastic change brought about in International Law by the Pact of Paris, and it is perhaps convenient to quote the relevant passage in full:

**“War between nations was renounced by the signatories of the Briand-Kellogg Pact. This means that it has become illegal throughout practically the entire world. It is no**

These laws are not merely suggestions; they are legally binding requirements<sup>18</sup> – the “supreme Law of the Land.” President Bush’s disregard for these laws cannot

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longer to be the source and subject of rights. It is no longer to be the principle around which the duties, the conduct, and the rights of nations revolve. **It is an illegal thing. Hereafter, when two nations engage in armed conflict, either one or both of them must be wrongdoers – violators of this general treaty law.** We no longer draw a circle about them and treat them with the punctilios of the duellist’s code. Instead **we denounce them as lawbreakers.”**

And nearly ten years later, when numerous independent States lay prostrate, shattered or menaced in their very existence before the impact of the war machine of the Nazi State, the Attorney General of the United States, subsequently a distinguished member of the highest tribunal of that great country, gave significant expression to the change which had been effected in the law as the result of the General Treaty for the Renunciation of War, in a speech for which the freedom-loving peoples of the world will always be grateful. On the 27<sup>th</sup> March, 1941 – and I mention it now not as merely being the speech of a statesman, although it was certainly that, but as being the considered opinion of a distinguished lawyer – he said this:

**“The Kellogg-Briand Pact Of 1928**, in which Germany, Italy and Japan covenanted with us, as well as with other nations, to renounce war as an instrument of policy, **made definite the outlawry of war** and of necessity altered the dependent concept of neutral obligations.

**The Treaty for the Renunciation of War and the Argentine Anti-War Treaty deprived their signatories of the right of war as an instrument of national policy or aggression, and rendered unlawful wars undertaken in violation of their provisions. . . .**

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In flagrant cases of aggression where the facts speak so unambiguously that world opinion takes what may be the equivalent of judicial notice, **we may not stymie International Law and allow these great treaties to become dead letter.**

The Trial of German Major War Criminals  
Sitting at Nuremberg, Germany  
Vol. 2 Session 12 Page 45-59

<sup>18</sup> In addition to the treaty obligations set forth in footnote 17, the Nuremberg Tribunal Charter, to which the US committed itself, provides as follows:

- Principle VI: The crimes hereinafter set out are punishable as crimes under international law:
- (a) Crimes against peace;
    - (i) Planning, preparation, initiation or waging of a war of aggression or a war in violation of international treaties.
    - (ii) Participation in a common plan or conspiracy for the accomplishment of any of the acts mentioned under (i).

be countenanced in a country committed to the rule of law, rather than dictatorial rule.

## **Unconstitutional Warrantless Wiretapping of American Citizens**

Following September 11, 2001, President Bush illegally authorized the warrantless wiretapping of American citizens, in clear violation of the 4<sup>th</sup> Amendment to the US Constitution<sup>19</sup> and in direct violation of the Foreign Intelligence Surveillance Act.<sup>20</sup> After engaging in the practice for more than two

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The Nuremberg Tribunal Charter, to which the United States is a party, established that a war of aggression against a nation posing no imminent threat to the aggressor is a “crime against peace.” There can be no question that President Bush, by ordering and presiding over an unjustified and illegal invasion and occupation of Iraq was, and continues to be, in violation of international law, the US Constitution, and domestic law. No greater cause for impeachment has ever been known.

To describe President Bush as a war criminal is not hyperbolic. He has blatantly violated every relevant treaty and constitutional provision in leading the US to a so-called “pre-emptive” war against Iraq, without any justification in law or in fact. He must be held accountable, through impeachment and removal from office, or the many violated treaties and constitutional provisions are nothing more than paper and pretense.

### **Article VI, Clause 2 of the United States Constitution**

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and **all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land;** and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding. (Emphasis added.)

The Congress violated Article VI of the Constitution when it passed Congressional Joint Resolution 46 “authorizing” the President to order “the use of United States Armed Forces against Iraq.” President Bush then violated this article when he ordered the commencement of the invasion of Iraq, and as he has continued to cause armed warfare in violation of US commitments under the treaty provisions described above. The failure of Congress to hold President Bush accountable for his many violations of law, domestic and international, is an ongoing violation of its members’ oath to “support and defend the Constitution.”

<sup>19</sup> The Fourth Amendment provides:

**The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause,** supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. (Emphasis added.)

<sup>20</sup> 50 USC §36 (2000).

years, President Bush misled the public by stating that “any time you hear the United States government talking about wiretap, it requires – a wiretap requires a court order.”<sup>21</sup> It was not until a *New York Times* reporter broke the story in December 2005,<sup>22</sup> that Bush admitted he had authorized wiretapping through the National Security Agency.<sup>23</sup> He also claimed, in complete disregard of the US Constitution and relevant domestic law, that what he was doing was legal. Last August, a U.S. District Court judge declared that Bush has violated First Amendment rights.<sup>24</sup> A judge on the FISA panel quit in protest.<sup>25</sup>

Impeachment and removal from office is the only appropriate remedy for a President who asserts such abusive, totalitarian power, in contravention of fundamental rights and liberties embodied in the US Constitution<sup>26</sup> – and it is the only means by which we can make it clear in the future that no President can so casually override our precious freedoms.<sup>27</sup>

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<sup>21</sup> [www.whitehouse.gov/news/releases/2004/04/20040420-2.html](http://www.whitehouse.gov/news/releases/2004/04/20040420-2.html).

<sup>22</sup> James Risen and Eric Lichtblau, “Bush Lets U.S. Spy on Callers Without Courts,” *The New York Times*, Dec. 16, 2005.

<sup>23</sup> President George W. Bush Radio Address, Dec. 17, 2005: “I have reauthorized this program [warrantless wiretapping] more than 30 times since the September the 11th attacks, and I intend to do so for as long as our nation faces a continuing threat from al Qaeda and related groups.”

<sup>24</sup> U.S. District Court Judge Anna Diggs Taylor, in the case of ACLU v. NSA (8/17/2006), stated as follows:

It was never the intent of the framers to give the president such unfettered control, particularly where his actions blatantly disregard the parameters clearly enumerated in the Bill of Rights.

<sup>25</sup> Eric Lichtbau, “Judges on Secretive Panel Speak Out on Spy Program,” *The New York Times*, March 29, 2006.

<sup>26</sup> By a margin of 52% to 43%, Americans want Congress to consider impeaching President Bush if he wiretapped American citizens without a judge’s approval, according to a January 2007 Zogby International poll. [www.democrats.com/bush-impeachment-poll-2](http://www.democrats.com/bush-impeachment-poll-2).

<sup>27</sup> As Bruce Fein, who served as deputy Attorney General for the Reagan administration, has noted, such abuses of presidential powers must be regulated (1) to stop abuses while they are occurring, and (2) to prevent the eventual development of an imperial presidency that cannot any longer be checked by Congress. John Nichols, “What the President Ordered in This Case Was a Crime,” *The Nation* Blog, [www.thenation.com/blogs/thebeat?bid=1&pid=51824](http://www.thenation.com/blogs/thebeat?bid=1&pid=51824).

## **Destroying the Moral Standing of the United States by Engaging in Kidnapping, Incarceration-Without-Charges, and Torture of Human Beings – A Shameful Blight on Our Nation’s Honor That Can Be Remedied Only by Impeachment**

### **“Extraordinary Renditions” – Kidnapping and Sending Victims to Other Countries to be Tortured**

Maher Arar, a Canadian citizen, was deported to Syria from JFK Airport. Once in Syria, he was beaten with electrical cables for two weeks, then imprisoned in an underground cell for the better part of a year.<sup>28</sup>

Muslim cleric Osama Moustafa Hassan Nasr was kidnapped in Milan, Italy, by US and Italian intelligence agents and sent to Egypt, where he was tortured during his four-year detention.<sup>29</sup>

Khaled El-Masri, a German citizen, was kidnapped by CIA agents and flown to a secret prison in Afghanistan, where he was tortured during his five months in prison there. Apparently after it was discovered he was not who his captors thought he was, he was taken to Albania and left in a forest. To this day, he has no idea why he was kidnapped, imprisoned, and tortured.<sup>30</sup>

Those are among approximately 150 foreign nationals who have been victims of “extraordinary rendition.” Under this CIA program, begun by the Clinton administration, intelligence agents kidnap people and send them to secret sites abroad for interrogation. Numerous people detained under this program have experienced severe physical and psychological torture, and inhumane and humiliating treatment.

The practice of sending a person to a country where there are substantial grounds for believing he or she will be tortured is clearly prohibited by the

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<sup>28</sup> <http://www.ararcommission.ca/eng/index.htm>

<sup>29</sup> <http://www.cbsnews.com/stories/2005/06/24/world/main703982.shtml>

<sup>30</sup> <http://www.guardian.co.uk/usa/story/0,12271,1390256,00.html>

Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment,<sup>31</sup> which, as an international treaty to which the US is a party, is the “supreme law of the land.”<sup>32</sup> A separate federal statute also prohibits the practice.<sup>33</sup> The CIA’s role in kidnapping and imprisoning people without charges in countries infamous for torturing detainees, such as Egypt, Afghanistan, Pakistan, Jordan, and Uzbekistan, constitutes a clear violation of US and international law.

At least one document exists that would allow Congress and the American people to ascertain the extent of President Bush’s direct, affirmative involvement in the program of extraordinary rendition. The CIA has verified the existence of a fourteen page memorandum dated September 17, 2001 from President Bush to the Director of the CIA “pertaining to the CIA’s authorization to detain terrorists.”<sup>34</sup> The CIA refuses to release the document. It is imperative that Congress and the public obtain access to the document, to determine how and in what way President

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<sup>31</sup> The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which the United States is a party, explicitly prohibits the practice of extraordinary rendition to countries where there is reason to believe detainees will be tortured:

Article 1: For the purposes of this Convention, the term “torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

Article 3, Section 1: No State Party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

<sup>32</sup> Article VI, Clause 2, United States Constitution.

<sup>33</sup> The Foreign Affairs Reform and Restructuring Act of 1998 (“FAARA”), Pub. L. No. 105-277, §2242, 112 Stat. 2681 (Oct. 21, 1998), reprinted in 8 U.S.C. §1231, Historical and Statutory Notes (1999), provides as follows:

It shall be the policy of the United States not to expel, extradite, or otherwise effect the involuntary return of any person to a country in which there are substantial grounds for believing the person would be in danger of being subjected to torture, regardless of whether the person is physically present in the United States.

<sup>34</sup> [http://www.aclu.org/pdfs/safefree/20070110/cia\\_dorn\\_declaration\\_items\\_1\\_29\\_61.pdf](http://www.aclu.org/pdfs/safefree/20070110/cia_dorn_declaration_items_1_29_61.pdf)

Bush has been involved in this program, which is still occurring in blatant defiance of US and international laws and treaties.

### **Torture and Murder of Prisoners, Many of Whom Have Never Been Charged with Any Crime**

Abed Hamed Mowhoush turned himself over to US forces in Iraq in November 2003. Chief Warrant Officer Lewis Welshofer, who did not receive anything other than “sparse” guidelines about how to conduct prisoner interrogations, received a captain’s memo saying there were no specific rules of engagement for interrogations in Iraq. Captured detainees were considered “unprivileged combatants,” a status the Bush Administration had suggested meant detainees were not to be afforded the protections of the Geneva Conventions. With little guidance and the sense that the Geneva Conventions did not apply to Mowhoush, Welshofer called in a team that beat Mowhoush with sledgehammer handles. Later, Mowhoush’s hands were bound, he was struck repeatedly in the painful spot near the humerus, and was doused with water. Finally, Welshofer shoved Mowhoush, who was wrapped with electrical cord, head-first into a sleeping bag. Welshofer sat on Mowhoush’s chest and blocked his nose and mouth. Mowhoush, whose autopsy revealed “massive” bruising and five broken ribs, died of asphyxia due to smothering and chest compression.<sup>35</sup>

The torture and killing of Mowhoush is only one of dozens of cases of murder – and hundreds of cases of cruel torture – at the hands of US personnel in Iraq, Afghanistan, and Guantanamo. Given the scale and moral depravity of these circumstances, Congress must investigate the extent to which President Bush has been directly involved in orchestrating the unconscionable treatment of foreign nationals detained by US personnel as part of the “war on terror” or the invasion and occupation of Iraq.

### **President’s Command Responsibility under International Law and Responsibility for Faithful Execution of the Laws of the United States**

While we urgently need to know the precise extent to which President Bush directed US military personnel to torture detainees and prisoners of war, we already know the President has utterly abrogated his duty to ensure the laws of the

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<sup>35</sup> Hina Shamsi, “Command’s Responsibility – Detainee Deaths in U.S. Custody in Iraq and Afghanistan,” (A Human Rights First Report) February 2006, at 6-7.

United States are carried out. Under Article II, Section 3 of the Constitution, the president must “take care that the laws be faithfully executed.” With respect to the treaties and other laws prohibiting torture and other mistreatment of detainees, President Bush has utterly failed to meet his constitutional duty. President Bush even added a signing statement to the Detainee Treatment Act of 2005 that states, contrary to the separation of powers outlined by the Constitution, that he has the sole authority to interpret and enforce the act:

The executive branch shall construe Title X in Division A of the Act, relating to detainees, in a manner consistent with the constitutional authority of the President to supervise the unitary executive branch and as Commander in Chief and consistent with the constitutional limitations on the judicial power, which will assist in achieving the shared objective of the Congress and the President, evidenced in Title X, of protecting the American people from further terrorist attacks.<sup>36</sup>

For his gross dereliction of duty in not ensuring the faithful execution of US law, President Bush should be impeached and removed from office.

In addition, under the Nuremberg principle of “command responsibility,”<sup>37</sup> President Bush’s failure to stop and punish atrocities renders him culpable for them. For that, he should be held accountable through impeachment and removal from office.

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<sup>36</sup> President Bush has mounted nearly 800 challenges to enacted law through signing statements since the beginning of his presidency, an unprecedented figure. The American Bar Association views his use of signing statements as “contrary to the rule of law and our constitutional system of separation of powers.” (<http://www.abanet.org/media/releases/news072406.html>)

<sup>37</sup> Article 6 of the Charter of the Nuremberg International Military Tribunal established the legal basis for trying individuals accused of crimes against peace, war crimes, and crimes against humanity. The charter elaborated a principle of command responsibility, noting that “leaders, organisers, instigators and accomplices” who had taken part in the commission of or conspiracy to commit crimes could be held responsible. (<http://www.icrc.ch/web/eng/siteeng0.nsf/html/57JQ2X>) The US Supreme Court further developed the principle of command responsibility in the case of General Tomoyuki Yamashita, who was the Japanese military governor of the Philippines from 1944 until the surrender of Japanese forces in 1945. The Court held Gen. Yamashita responsible for atrocities committed by his troops, concluding that Yamashita had, under international law, “an affirmative duty to take such measures as were within his power and appropriate in the circumstances to protect prisoners of war and the civilian population.” *Yamashita v. Styer*, 327 U.S. 1 (1946).

Sexual humiliations, incarceration for years without charges being brought, lit cigarettes put out in detainees' ears, inmates hanging by their arms, brutal beatings, attacks by unmuzzled dogs, false executions, sensory deprivations, psychological torture, waterboarding, dozens of killings, and other forms of heinous torture of human beings – if these acts, consonant with Bush administration policy<sup>38</sup> yet in violation of numerous treaty obligations<sup>39</sup> and US

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<sup>38</sup> “President Bush declared on February 7, 2002, that the Geneva Conventions did not apply to prisoners in Afghanistan and in Guantanamo. The president’s objective in doing so was to allow harsh interrogation of detainees, despite the laws against it. The president failed to ‘take care’ to ‘faithfully execute the laws.’ Instead he sought ways to circumvent the law, and to enable those who used torture to avoid punishment. This is an impeachable offense.” Elizabeth Holtzman, *The Impeachment of George W. Bush* (New York: Nation Books: 2006), at 125.

The president’s declaration about the inapplicability of the Geneva Conventions led to, and served to condone, treatment of prisoners at Guantanamo Bay that was characterized as “tantamount to torture” by the International Committee of the Red Cross, as well as the torture of prisoners in Afghanistan. *Id.* at 128.

<sup>39</sup> The Universal Declaration of Human Rights, unanimously adopted by the United Nations General Assembly, provides at Article 5: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”

The Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment provides at Principle 1: “All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person.”

The International Covenant on Civil and Political Rights, to which the United States is a signatory, provides at Article 7: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”

The four Geneva Conventions of 1941, ratified by the United States, are the primary source of international humanitarian law. The Third Geneva Convention concerns prisoners-of-war, while the Fourth Geneva Convention safeguards co-called “protected persons,” who are detained civilians. According to the International Committee of the Red Cross (ICRC) Commentary on the Fourth Geneva Convention, “**Every person in enemy hands must have some status under international law**: he is either a prisoner of war and, as such, covered by the Third Convention, a civilian covered by the Fourth Convention, or again, a member of the medical personnel of the armed forces who is covered by the First Convention. **There is no intermediate status; nobody in enemy hands can be outside the law.**” (Emphasis added.) Under these laws, detainees must be humanely treated (Geneva III, art. 13, Geneva IV, art. 27). Geneva III, art. 17 and Geneva IV, art. 31 prohibit any form of “physical or mental coercion” of detainees. The torture or inhumane treatment of detainees is not only prohibited (Geneva III, arts. 17 and 87 (prisoners-of-war); Geneva IV, art. 32 (protected persons)), but considered to be war crimes (Geneva III, art. 130; Geneva IV, art. 147). The obligation of all states to prosecute the perpetrators of war crimes or to turn them over to another state for prosecution applies regardless of the nationality of the perpetrator, the nationality of the victim or the place where the act of torture or inhumane treatment was committed. (Geneva III, art.

domestic law,<sup>40</sup> are not deserving of impeachment and removal from office, nothing ever would be.

Respectfully submitted this 1<sup>st</sup> day of March, 2007:

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Ross C. “Rocky” Anderson  
Mayor, Salt Lake City, Utah

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129; Geneva IV, art. 146.) Even people who are not entitled to the protections of the 1949 Geneva Conventions are protected by the “fundamental guarantees” of article 75 of Protocol I of 1977 to the Geneva Conventions, which prohibits murder, “torture of all kinds, whether physical or mental,” “corporal punishment,” and “outrages upon personal dignity, in particular humiliating and degrading treatment, . . . and any form of indecent assault.” ) Summary of International and U.S. Law Prohibiting Torture and Other Ill-treatment of Persons in Custody (Human Rights Watch), May 24, 2004 ([www.hrw.org/english/docs/2004/05/24/usint8614.htm](http://www.hrw.org/english/docs/2004/05/24/usint8614.htm)).

<sup>40</sup> The War Crimes Act of 1996 (18 U.S.C. §2441) provides that it is a criminal offense for U.S. military personnel and U.S. nationals to commit war crimes as described in the 1949 Geneva Conventions. Another statute, 18 U.S.C. §2340A, provides for significant sanctions (including the death penalty in the case of a victim’s death) for a U.S. national or anyone present in the United States who, while outside the U.S., commits or attempts to commit torture, which is defined as an “act committed by a person under the color of law specifically intended to inflict severe physical or mental pain or suffering . . . upon another person within his custody or physical control.”