

II CAL POLY

Academic Senate

CALIFORNIA POLYTECHNIC STATE UNIVERSITY
San Luis Obispo, California 93407
ACADEMIC SENATE
805.756.1258

MEETING OF THE ACADEMIC SENATE EXECUTIVE COMMITTEE
Tuesday, February 20, 2007
01-409, 3:10 to 5:00pm

- I. Minutes: Approval of minutes for the Executive Committee meetings of January 16 and January 30, 2007 (pp. 2-5).
- II. Communications and Announcements:
- III. Reports: *[Please limit reports to three minutes or less]*
 - A. Academic Senate Chair:
 - B. President's Office:
 - C. Provost:
 - D. Statewide Senate: Manzar Foroohar: ASCSU Resolution on Recognition and Support of Faculty Service in Governance (pp. 6-7).
 - E. CFA Campus President:
 - F. ASI Representative:
 - G. Caucus Chairs:
 - H. Other: [TIME CERTAIN 4:15] Paul Rinzler, Chair of the Faculty Dispute Review Committee: elimination of Faculty Dispute Review Committee (p. 8).
- IV. Consent Agenda:
- V. Business Item(s):
 - A. Academic Senate committee vacancies/university committee vacancies: (p. 9).
 - B. Resolution Endorsing ASCSU Resolution on the "Importance of Settling the Contract between the CSU and CFA": Executive Committee, (pp. 10-11).
 - C. Resolution on Accessibility of Instructional Materials: Schaffner, chair of the Instruction Committee (to be distributed).
 - D. Resolution on Searches for Academic Campus Administrators: Foroohar, chair of the Faculty Affairs Committee (p. 12).
 - E. Resolution Against an Attack on Iran or Syria Without Prior Congressional Authorization: Russell, academic senator (pp. 13-25).
- VI. Discussion Item(s):
- VII. Adjournment:

CALIFORNIA POLYTECHNIC STATE UNIVERSITY
San Luis Obispo, California 93407
ACADEMIC SENATE

MINUTES OF
The Academic Senate Executive Committee
Tuesday, January 30, 2007
01-409,3:10-5:00 p.m.

Preparatory: The meeting was called to order at 3:15 p.m.

- I. Minutes: none.
- II. Communications and Announcements: Giberti announced that the official record of meetings will be an abbreviated set of minutes. Academic Senate meetings will be recorded, and Gregory will take notes. Camuso reported that there are 24 vacancies for senators and only six nominations have come in as of today. Deadline is February 2.
- III. Reports:
 - A. Academic Senate Chair: Giberti reported on the reform of the Academic Senate committees. The Instruction Committee is developing a resolution on the accessibility of instructional material. The Faculty Affairs Committee is continuing its work on a resolution on the MPP hiring policy. At the next Executive meeting, the Executive Committee will discuss a resolution from Senator Craig Russell asking the Academic Senate to take a position on foreign policy.
 - B. President's Office: Howard-Greene reported on the progress of Access to Excellence as well as on the faculty and student diversity of the different colleges on our campus.
 - C. Provost's Office: Unny Menon, on behalf of Provost Durgin, reported on the Access to Excellence activities scheduled for the February 27. In addition, David Conn reported on his participation in a newly created task force to respond to the Spellings report.
 - D. Statewide Senate: none.
 - E. CFA Campus President: Saenz reported on the CFA and CSU roles in the fact-finding phase of contract negotiations.
 - F. ASI Representative: none.
 - G. Other: David Hannings reported that CENG and OCOB curriculum proposals will appear as consent items on the agenda of the February 13 Academic Senate meeting.
- IV. Consent Agenda: none.
- V. Business Items:
 - A. Academic Senate University committee vacancies: The following appointments were made:

<u>College of Agriculture, Food and Environmental Sciences</u>	
Grants Review Committee	Phil Tong, Dairy Production
US Cultural Pluralism	Leanne Berning, Dairy Science

College of Science and Mathematics
Grants Review Committee

John Goers, Chemistry

CAP Coordination & Review Committee

Bruno Giberti, Architecture

- B. Curriculum proposal for Masters in Agricultural Education (MAE): Hannings explained that this used to be the Masters in Science with a specialization in Agricultural Education. The proposal was agendized and will appear on the February 13 agenda.
- C. Resolution on Focus the Nation (Greenwald): The resolution requests the faculty's endorsement of Cal Poly's participation on the "Global Warming Solutions for America" symposium on or around January 31, 2008. M/S/P to agendize for February 13.

VI. Discussion Item (s):

Access to Excellence: Giberti discussed the role that Academic Senate would have on the events of February 27. It was decided that the focus of the special session would be Domain 6, System/Campus Identity. The Caucus Chairs should each be prepared to make a statement addressing this issue from the perspective of their colleges.

VII. Adjournment: the meeting was adjourned at 5:00 p.m.

Submitted by,



Gladys Gregory
Academic Senate

CALIFORNIA POLYTECHNIC STATE UNIVERSITY
San Luis Obispo, California 93407
ACADEMIC SENATE

MINIJTESOF
The Academic Senate Executive Committee
Tuesday, January 16, 2007
01-409, 3:10-5:00 p.m.

Preparatory: The meeting was called to order at 3:15 p.m.

- I. Minutes: The minutes of the December 12 meeting were approved as presented.
- II. Communications and Announcements: Beginning this quarter, the Senate will produce a more condensed version of the minutes that will follow Robert's Rules.
- III. Reports:
 - A. Academic Senate Chair: Giberti reported on the meeting frequency of Academic Senate Committees during fall quarter and the WASC accreditation process and timeline.
 - B. President's Office: Howard-Greene reported on President Baker's participation on the Business for Higher Education Forum.
 - C. Provost's Office: Durgin provided information about the enrollment numbers for winter quarter and Cal Poly's participation in CSU strategic planning.
 - D. Statewide Senate: Hood reported on the lack of a contract between CFA and CSU.
 - E. CFA Campus President: Saenz reported on CFA's informational picketing and on contract negotiations.
 - F. ASI Representative: Maki reported on ASI's efforts regarding student fee increases.
 - G. Other: Unny Menon reported on Access to Excellence.
- IV. Consent Agenda: CAED and COE proposals will appear as consent items on the agenda of the January 23 Academic Senate meeting.
- V. Business Items:
 - A. Academic Senate committee vacancies | University committees: The following appointments were made:

<u>COLLEGE OF BUSINESS</u>	
Instruction Committee	Kevin Lertwachara, Management
US Cultural Pluralism	Cyrus Ramezani, Finance
 - B. Curriculum proposal for LA 211: This item will appear as a consent item on the agenda of the January 23 Academic Senate meeting.

- VI. Discussion Item (s): Giberti proposed that caucus chairs provide a short report at each Executive Committee meeting.
- VII. Adjournment: the meeting was adjourned at 5:00 p.m.

Submitted by,



Gladys Gregory
Academic Senate

ACADEMIC SENATE
OF
THE CALIFORNIA STATE UNIVERSITY

AS-2781-06/FA (Rev)
November 9, 2006

Recognition and Support of Faculty Service in Governance

RESOLVED: That the Academic Senate California State University (CSU) affirm its commitment to and appreciation for faculty who engage in shared governance as part of their faculty service activities; and be it further

RESOLVED: That the Academic Senate CSU urge campus academic senates to review their retention, tenure, and promotion documents to ensure that they encourage faculty at appropriate stages of their academic careers to engage actively and productively as contributors to academic governance; and be it further

RESOLVED: That the Academic Senate CSU urge campus academic senates to consider establishing campus award programs, if they do not already exist, to recognize exceptional faculty contributors to academic governance at each stage of their academic careers; and be it further

RESOLVED: That the Academic Senate CSU encourage local campus senates to establish and support formal or informal mentorship programs that encourage new faculty members, at appropriate stages of their careers, to become full, well-rounded academic citizens of their campuses through participation in shared governance; and be it further

RESOLVED: That the Academic Senate CSU urge campus administrators, including presidents and provosts, to provide active and material support for such mentorship programs and award programs, as well as sufficient assigned time to fairly compensate faculty for their governance activities; and be it further

RESOLVED: That the Academic Senate CSU forward this resolution to campus senates, presidents, and provosts.

RATIONALE: This resolution focuses on faculty governance rather than the broader category of service. Retention, tenure and promotion (RTP) processes, as implemented, often undervalue service, particularly as fewer and fewer tenured and tenure-track faculty are available to provide service to the university. This resolution advocates for service to be meaningfully considered with a particular emphasis on mid-career and senior-level involvement in faculty governance.

Typical PhD. programs do much to train scholars in their disciplines. Few programs train PhD. recipients in skills appropriate to teaching and even fewer provide guidance for potential faculty members in service and governance. Sometimes PhD. advisors and later the new faculty members' CSU faculty mentors explicitly discourage a strong commitment to service, which is seen as providing fewer benefits than research or teaching endeavors, and/or benefits that are less portable across institutions.

As the demographics of faculty in the CSU change, there is concern that academic governance responsibilities are being undertaken by fewer and fewer faculty members. This concern was explicitly noted in a report submitted to the Academic Senate CSU in 2001 (Shared Governance Reconsidered: Improving Decision-Making in the CSU) and is exacerbated by the lack of progress that the CSU and the Legislature have made in implementing ACR 73. The importance of service was reinforced in "Faculty Service in the California State University (CSU): An integral component in the retention, tenure, and promotion of Faculty" (December 19, 2002). The Academic Senate CSU has addressed the issue on at least two occasions: "Shared Governance in the CSU," AS-2489-00/FGA - March 9-10, 2000; and "Encouraging the Establishment of Faculty Leadership Awards," AS-2306-96/FA - January 18-19, 1996.

Mentoring new faculty in the demands of service, and to their role and responsibilities relative to shared governance is an often neglected aspect of faculty development. The modern realities of increased expectations regarding research as well as a continuing expectation regarding effective teaching create a high level of workload commitments. These conflicting demands on time often lead to passive neglect of faculty involvement in service in general and faculty governance in particular.

As an institution valuing shared governance, the CSU relies heavily upon the work of committed faculty members to conduct the business of the university beyond the classroom. This resolution urges campus senates to apply their own standards to the balance among teaching, research and creative activity, and service (including governance) in reviewing their RTP policies so as to encourage and recognize appropriate faculty participation in academic governance. It also urges campuses to consider the creation of awards, if such do not already exist, to highlight exceptional faculty contributors to academic governance, as well as providing the resources required to implement these initiatives.

APPROVED UNANIMOUSLY - January 18-19, 2007

Margaret Camuso

To: Academic Senate Executive Committee
Subject: Report from the Faculty Dispute Review Committee

> Dear Executive Committee:
>
> The Faculty Dispute Review Committee was asked to review the
> procedures of the committee and whether the committee's purpose might
> be better served through other means. Those committee members that
> responded had varying opinions.
>
> Regarding the committee's basic role and function, one member thought
> that the decision to keep the committee or not should be made above
> the level of the committee itself. Another suggested that the
> committee might serve only as a facilitator, and not be involved with
> resolving a dispute per se. Another thought that the role and
> function of the committee was fine as it is. Another thought that
> there is a problem between the committee acting neutrally in order
> to help the parties reach a resolution themselves and the committee
> recommending a course of action to the Provost, probably against one
> party and for the other; and that the committee's job could be taken
> over by Creative Mediation, an organization that currently provides
> free mediation for SLO residents and Cal Poly students.
>
> "With regard to editing or changing the charge of the committee, one
> member mentioned that the current procedures for the committee are
> fine as they stand, being the result of a great amount of effort and
> deliberation. Another agreed, assuming that the committee's basic
> role and function are not changed.
>
> Respectfully submitted,
>
> Paul Rinzler

Academic Senate Committee Vacancies for 2006-2008

COLLEGE OF ARCHITECTURE AND ENVIRONMENTAL DESIGN

Budget and Long-Range Planning Committee

COLLEGE OF EDUCATION

Distinguished Scholarship Awards Committee.

Faculty Dispute Review Committee (2006-2007 term)

Fairness Board

Instruction Committee (2006-2007 term)

Student Grievance Board (2006-2007 term)

Sustainability Committee (2006-2007 term)

COLLEGE OF LIBERAL ARTS

Curriculum Committee

COLLEGE OF SCIENCE AND MATHEMATICS

Library Committee

PROFESSIONAL CONSULTATIVE SERVICES

Curriculum Committee (2006-2007 term)

Faculty Dispute Review Committee

Instruction Committee

Research and Professional Development Committee

US Cultural Pluralism Subcommittee

Intellectual Property Review Committee (2006-2007)

ACADEMIC SENATE COMMITTEES CHAIR Vacancies for 2006-2007

US Cultural Pluralism Subcommittee

Adopted:

ACADEMIC SENATE
of
CALIFORNIA POLYTECHNIC STATE UNIVERSITY
San Luis Obispo, CA

AS- 07

RESOLUTION ENDORSING THE ACADEMIC SENATE CSU
RESOLUTION ON THE "IMPORTANCE OF SETTLING THE CONTRACT
BETWEEN THE CSU AND CFA"

- 1 WHEREAS, The Academic Senate CSU has urged local Senates to review and endorse the
2 "Importance of Settling the Contract between the CSU and CFA" (AS-2782-
3 07fFA, January 18-19,2007); and
4
5 WHEREAS, The Academic Senate of Cal Poly has reviewed AS-2872-07fFA and finds the
6 principles embodied to be consistent with the Academic Senate's role in
7 advocating for a high quality system of higher education; therefore be it
8
9 RESOLVED: That the Academic Senate of Cal Poly endorse Academic Senate CSU resolution
10 AS-2782-07fFA.

Rationale: AS-2782-07fFA (attached) indicates some of the reasons why having the contractual bargaining between the CSU system and the CFA reach a reasonable settlement as quickly as possible is in the best interest of the CSU as a whole. The resolution speaks to issues that have historically been in the domain of the Senate. Rapid resolution of the issues and adoption of a fair and equitable contract will help the CSU attract and retain high quality faculty who will continue to provide a superior education to the people of California. At the same time, funding to the system is not adequate to address the critical needs that currently exist, including those related to equitable compensation, workload issues and professional development. A concerted effort is required to obtain funding from the legislature and governor that more realistically reflects the actual needs of the system.

Proposed by: Academic Senate Executive Committee
Date: February 13, 2007

Academic SENATE
OF
THE CALIFORNIA STATE UNIVERSITY

AS-2782-07/FA
January 18-19,2007

Importance of Settling the Contract Between the CSU and CFA

- RESOLVED: That the Academic Senate California State University (CSU) reaffirm the role of the academy as a venue for creative, thoughtful and respectful discourse where conflicting perspectives can be debated and reasonable compromises reached; and be it further
- RESOLVED: That the Academic Senate CSU recognize that it is neither the role nor the responsibility of the Academic Senate CSU to participate in contract bargaining between the CFA and CSU; it is, however, the role of the Academic Senate CSU to advocate for actions and policies that produce a quality educational system; and be it further
- RESOLVED: That the Academic Senate CSU acknowledge that the climate that currently exists in the contract negotiation process undermines morale at all levels, compromises our efforts to provide quality instruction to our students, and damages our ability to recruit and retain high quality students, faculty, staff and administrators; and be it further
- RESOLVED: That the Academic Senate CSU again call attention to matters of faculty compensation, workload, and professional growth and development as critical contract issues that must be adequately addressed if the CSU is to recruit and retain the numbers of well-qualified faculty needed to provide high quality classroom instruction; and be it further
- RESOLVED: That the Academic Senate CSU urge negotiators for the CSU and the California Faculty Association (CFA) to use the fact-finding process as a means to reach a reasonable solution that addresses the critical issues without resorting to imposition or job actions; and be it further
- RESOLVED: That the Academic Senate CSU call upon the Legislature and Governor to address the unmet long term financial needs that exist within the CSU; and be it further
- RESOLVED: That the Academic Senate CSU forward this resolution to the Governor, Legislature, CSU Board of Trustees and Chancellor, the CFA and local campus senate chairs; and be it further
- RESOLVED: That the Academic Senate CSU urge local senates to review and endorse this resolution.

RATIONALE: Rapid resolution of the issues and adoption of a fair and equitable contract will help the CSU attract and retain high quality faculty who will continue to provide a superior education to the people of California. At the same time, funding to the system is not adequate to address the critical needs that currently exist, including those related to equitable compensation, workload issues and professional development. A concerted effort is required to obtain funding from the Legislature and Governor that more realistically reflects the actual needs of the system.

APPROVED - January 18-19,2007

Adopted:

ACADEMIC SENATE
of
CALIFORNIA POLYTECHNIC STATE UNIVERSITY
San Luis Obispo, CA

AS- 07

RESOLUTION ON
SEARCHES FOR ACADEMIC CAMPUS ADMINISTRATORS

- 1 WHEREAS, "Shared governance" is necessary for the assurance of educational quality and the proper
2 functioning of an institution of higher education; and
3
- 4 WHEREAS, Procedures governing the creation of new, permanent or reassigned administrative
5 positions, public announcements about the existence of and/or formation of search
6 committees for such positions are not clearly established and publicized on our campus;
7 and
8
- 9 WHEREAS, The lack of clarity in procedures for announcing the existence of administrative positions
10 and/or searches for persons to fill them could create uncertainty within the University;
11
- 12 WHEREAS, Participation of faculty from different disciplines and ranks in searches of academic
13 administrators is one way to promote productive relationships between faculty and campus
14 administrators at Cal Poly; therefore be it
15
- 16 RESOLVED: That the Academic Senate of Cal Poly reaffirm its commitment to the principle of shared
17 governance, in particular, the practice of providing full and meaningful consultation
18 through the normal processes of faculty governance in the creation of academic
19 management personnel positions (MPP), and the selection and appointment of academic
20 management personnel; and be it further
21
- 22 RESOLVED: That the Academic Senate of Cal Poly affirm that shared governance requires (a)
23 meaningful faculty involvement in establishing selection criteria for vacancy
24 announcements of academic management personnel positions, (b) timely reporting to the
25 Academic Senate as academic management personnel positions are created, reassigned,
26 and retitled, and (c) candid and effective communication during academic MPP hiring
27 decisions, including decisions contrary to faculty recommendations; and be it further
28
- 29 RESOLVED: That the Academic Senate of Cal Poly urge that where the MPP position has significant
30 involvement with curriculum, faculty affairs, and/or instructionally related matters, faculty
31 elected from or selected by tenured, tenure-track, and full time lecturers (holding 12.12
32 entitlement) comprise the majority of the selection committee.

Proposed by: Academic Senate Faculty Affairs Committee
Date: January 23, 2007

January 29, 2007

Dear Colleagues on the Academic Senate.

The following essay and resolution are founded on two central pillars: a) The integrity and preservation of the U.S. Constitution; and b) our promise to defend it.

This resolution is explicitly *non-partisan*. The resolution is not about the proposed "troop surge" -that's another issue. My arguments here are historical, legal, and in one or two instances strategic. I respectfully ask that you take ten minutes and read the whole essay before passing judgment. Thank you.

Sincerely,

Dr. Craig H. Russell

Music Dept. & member of the
Academic Senate, CLA

Cosponsors of the Resolution:

Myron Hood (Academic Senate & Mathematics)

Harvey Greenwald (Academic Senate & Mathematics)

Paul Rinzler (Academic Senate & Music)

Steven Marx (English, DTA winner)

Kevin Clark (English, DTA winner)

William "Memo" Martinez (Modern Languages, DTA winner)

Linda Vanasupa (Materials Engineering, DTA winner)

Resolution Against an Attack on Iran or Syria
Without Prior Congressional Authorization

WHEREAS: a preemptive attack on Iran or Syria by land, sea, or air-ordered by the President and Vice President without prior authorization from Congress-cannot be justified or defended using the theory of anticipatory self-defense as articulated in the legal precedent of the Caroline incident of 1837; and

WHEREAS: a preemptive attack on Iran or Syria by land, sea, or air-ordered by the President and Vice President without prior authorization from Congress-is in direct violation of Article 1, Section 8, Clause 11 of the Constitution that states that only "the Congress shall have Power to ... declare War"; and

WHEREAS: a preemptive attack on Iran or Syria by land, sea, or air-ordered by the President and Vice President without prior authorization from Congress-is in open defiance of Chapter I, Article 2, Sections 3 & 4 and Chapter VI, Article 33, Section 1 and Article 37, Section 1 of the United Nations Charter, and by extension, is therefore in direct violation of Article VI of the Constitution of the United States; and

WHEREAS: a preemptive attack on Iran or Syria by land, sea, or air-ordered by the President and Vice President without prior authorization from Congress-would produce unforeseen consequences that potentially could be ruinous, calamitous, and contrary to the inherent interests of the United States of America; and

WHEREAS: the founding fathers-George Washington, Thomas Jefferson, and James Madison---explicitly warn against the consolidation of power in a single branch of government through encroachment and usurpation, and since a preemptive attack on Iran or Syria without prior congressional authorization will lead to the dangerous consolidation of power in the hands of the Executive Branch by redistributing the war-making powers of Congress to the Executive; and

WHEREAS: the United States should first attempt diplomacy through direct talks with Iran and Syria before initiating or escalating military confrontation; and

WHEREAS: every member of the faculty and of the Academic Senate has sworn an oath to defend the Constitution of the United States of America and therefore is compelled to act if they determine the Constitution is threatened; and

WHEREAS: the Constitution of the United States is indeed threatened by a president who claims that he has the inherent right to authorize and initiate an attack , on a sovereign nation without prior and explicit congressional approval;

THEREFORE, be it

RESOLVED: that the Academic Senate comply with its oath to defend the Constitution of the United States by openly declaring its opposition to the Bush Doctrine as inherently incompatible with the provisions of the Constitution; and be it further

RESOLVED: that the Academic Senate declare its opposition to any presidential order to execute a preemptive attack on Iran's and Syria's sovereign territories-by either land, sea, or air-without a prior Act of Congress that would specifically and unambiguously include Iran or Syria in its resolution authorizing the use of military force; and be it further

RESOLVED: that the Academic Senate send a copy of this resolution to the Academic Senate of each CSU campus and to the Statewide CSU Senate asking for their support; and be it further

RESOLVED: that the Academic Senate send a copy of this resolution to each member of the California delegation in the U.S. Congress; and be it further

RESOLVED: that we formally request that the members of our California delegation reassert their constitutional decision-making powers over the declarations of war and peace as prescribed in the U.S. Constitution; and be it further

RESOLVED: that we formally request that the members of our California delegation challenge the president's unconstitutional usurpation of war-making powers; and be it further

RESOLVED: that we formally demand of the members of California's congressional delegation that if and when the President and Vice President initiate a preemptive attack on Iran or Syria without prior congressional authorization that specifically and unambiguously includes Iran or Syria in its resolution authorizing the use of military force, that the California congressional delegation submit articles of impeachment against the President and Vice President immediately after the unauthorized and unconstitutional attack.

Our Nation and Constitution in Peril

An Essay and Resolution authored by Craig H. Russell

January 14, 2007

A Prelude: The Promise

I remember sitting in Dean Ericson's office over in the Faculty Office Building' back in 1983; Jon was sitting in his imperial chair, sliding a contract across his desktop for me to sign so that I could start my new job as a music professor here at Cal Poly. I was thrilled. At one point, however, I discovered that as a condition for employment with the state of California, I had to take an oath promising to defend its constitution and the Constitution of the United States of America. ¹ "How laughable!" I thought to myself. "I'm a guitar player, and I teach music appreciation. What am I supposed to do if there's trouble?" At the time, I thought it was rather silly, but I *did* sign my name. I raised my hand and swore that oath.

I made a promise. We all did.

Threatened Attack on Iran & Syria: The Threat to the Constitution

Four nights ago, in a televised address to the nation, George W. Bush offered unsettling words in which he threatened Iran and Syria with probable military strikes by U.S. forces. He stated:

Iran is providing material support for attacks on American troops. We will disrupt the attacks on our forces. We'll interrupt the flow of support from Iran and Syria. And we will seek out and destroy the networks providing advanced weaponry and training to our enemies in Iraq.

We are also taking other steps to bolster the security of Iraq and protect American interests in the Middle East. I recently ordered the deployment of an additional carrier strike group to the region. We will expand the intelligence sharing and deploy Patriot air defense systems to reassure our friends and allies. We will work with the governments of Turkey and Iraq to help them resolve problems along their border. And we will work with others to prevent Iran from gaining nuclear weapons and dominating the region.

¹ Government Code Section 3102: Oath of Allegiance and Declaration of Permission to Work for Persons Employed by the State of California. "I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic; that I will bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of California; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter."
www.documents.dgs.ca.gov/osp/pdf/std689.pdf
target="_blank"><http://72.14.253.104/search?q=cache:Q5Gmt2neePMJ:www.documents.dgs.ca.gov/osp/pdf/std689.pdf+california+Government+Code,+Oath+of+Allegiance&hl=en&gl=us&ct=clnk&cd=1>

² Transcript of President Bush's Address to the Nation on U.S. Policy in Iraq. *The New York Times*, January 11, 2007 (section A18),

With the arrival of the aircraft carrier U.S.S. Eisenhower (along with its nuclear submarine, two destroyers, and cruiser), the U.S. has consolidated enormous firepower near the Persian Gulf. Patriot missile batteries are at the ready. Some of them have nuclear "bunker busters." These weapons cannot be used in combating improvised explosive devices (IEDs), sectarian death squads, or sniper fire in Iraq. No, these naval battle groups are intended to threaten Syria and Iran with a major air attack within their sovereign borders, on the pretext that they are assisting their Shia friends in Iraq (which is probably true). Syria and Iran are influencing events within Iraq, and any rational Middle East policy has to address that. However, a unilateral decision by Mr. Bush to attack Iran or Syria-without prior, unequivocal authorization from Congress-is not only foolhardy and dangerous, but it constitutes a violation of the Constitution of the United States.

Mr. Bush, however, has tried to finesse the issue and dodge the Constitution's framework by formulating a new and highly dangerous policy known as "The Bush Doctrine." This perilous theory rests on two flawed arguments: 1) a misreading of precedent set by the Caroline incident in 1837; and 2) a controversial theory known as the "unitary executive."

The Caroline Incident and the Fallacy of the Bush Doctrine

George Bush has put forward a theory of "forward deterrence," also known as "The Bush Doctrine," in which he asserts that the President (acting as Commander in Chief) has the authority to attack any nation or any group that might pose a future threat to U.S. interests.³ Condoleezza Rice floated this idea out before the press in the build-up to the Iraq War, when she asserted: "Anticipatory self-defense is not a new concept ... You know, Daniel Webster actually wrote a very famous defense of anticipatory self-defense.,⁴ She is referring to Daniel Webster's legal argument made in the aftermath of the Caroline incident. In December, 1837, the American ships in New York supplied French Canadians with arms in their rebellion against the British. In trying to stop these arms shipments, the British boarded the *Caroline* (an American vessel), set it on fire, and sent it over Niagara Falls.⁵ They tried to defend this transgression in international waters by stating that it was necessary self-defense. Three years later, however, Daniel Webster (the new American Secretary of State) took a different stance and explained why the British actions were illegal. He acknowledged that anticipatory self-defense could be acceptable, but *ONLY* if the danger is "instant, overwhelming, leaving no choice of means, no moment for deliberation.... It must be shown that daylight could not be waited for; that there could be no attempt at discrimination between the innocent and the guilty.,⁶

³ Charles W. Kegley & Gregory A. Raymond. "Global Terrorism and Military Preemption." <http://www.palgrave-journals.com/ip/journal/v41/In1/pdf/8800064a.pdf?file=/i/p/journal/v41/In1/pdf/8800064a.pdf>.

⁴ *New York Times*, 27 Sept. 2002.

⁵ History News Network (HNN), "Would Daniel Webster Approve an Attack on Iraq," 10-8-02. <http://hnn.us/articles/1024.html>.

⁶ HNN, "Would Daniel Webster Approve an Attack on Iraq."

For Webster's stance on the Caroline incident to be applicable as a valid precedent here, the perceived threat from Iran or Syria has to meet *all* of Webster's criteria, not just some.

- 1) The threat must be sudden or "instantaneous."
- 2) The danger must be "overwhelming."
- 3) The *only* course left must be immediate, with no time for deliberation.

The growing menace posed by Iran and Syria does not meet any of those criteria. The threat is growing, but not instantaneous. The danger posed by Iran and Syria is serious, but not overwhelming. Although we must act to confront our problems, there still is time for deliberation. We have not even tried direct diplomacy with Iran and Syria as an option (and that was one of the most urgent recommendations proposed by the Baker-Hamilton Iraq Study Group). The President has rattled his saber. If he were to take the next step and order a "preemptive attack" against either nation within their sovereign boundaries, it would be foolish and patently illegal. The Caroline incident is not a viable precedent for such a military strike.

The Fallacy of the "Unitary Executive" Bush & Cheney-vs.-the Founding Fathers

In the last six years, Mr. Bush and Mr. Cheney have bestowed upon themselves unchecked powers not explicitly granted in the Constitution, defending their usurpations as allowable under "executive privilege"-also known as the theory of the "Unitary Executive." For instance, Mr. Bush and Mr. Cheney have argued that since the President is designated the "Commander in Chief" of all military forces by the Constitution, he has inherent authority to do whatever he thinks is necessary---even if those actions are never scrutinized or authorized by Congress nor ever validated by the Courts as being constitutional or legal. Dick Cheney has given verbal acknowledgment of the checks and balances of the Constitution but in the same breath has contradicted those very concepts with the startling assertion, "given the world that we live in ... the president needs to have unimpaired executive authority...⁷ In this world of unchecked presidential prerogative we have seen the following: widespread wiretapping of Americans' phone lines by the National Security Administration without a warrant; the government's spying on citizens by opening their mail without a warrant; the suspension of habeas corpus even in the case of American citizens; the detaining of hundreds of people in Guantanamo without a recognized legal framework that would enable them to know the charges against them or the chance to confront their accusers; the widespread use of "extraordinary rendition" where individuals are kidnapped by American agents and then flown to secret torture camps in "friendly" client nations; hundreds of "signing statements" by a president who signs enacted legislation into law while simultaneously

⁷ See Vice President Cheney's views as given during James Taranto's interview, "A Strong Executive: Dick Cheney discusses presidential power and foreign policy," *The Wall Street Journal*, January 28, 2006.
<http://home.nyc.rr.com/taranto/chene.htm>.

subverting that same legislation by proclaiming that he and the entire Executive Branch are exempt from its provisions. Nowhere in the Constitution are these weighty privileges granted to the Executive Branch on the basis of the President serving as "commander in chief." Nowhere.

And nowhere is government's power more awesome and sobering than its power to make peace and war. It is imperative that we as citizens, as sworn protectors of the Constitution, ask ourselves: on what constitutional authority can a president send our armed forces into conflict without prior congressional authorization? What are the ramifications of a rash and impetuous confrontation against Iran and Syria? What are the long-term implications to our system of government and the inevitable threat to our Constitution that a "preemptive war" against Iran or Syria would present?

The Constitution's Separation and Balance of Powers

Granted, Article 2 of the Constitution gives the power to *direct* a war to the president. However, the Constitution simultaneously assigns the authority to *decide* whether or not to go to war *solely* to the Congress (Article 1, Section 8, Clause 11). The framers of the Constitution thus established a division of powers. Simply stated:

Congress declares the wars and the President commands them.

What would happen if the President were to encroach on the war-waging powers of the Congress? Alexander Hamilton and James Madison debated this very point. Hamilton had served directly under General Washington and wanted to grant him the powers to wage war. Madison was of a different mind. Even though the president in question was George Washington—a man respected and revered by all—Madison was reticent and fearful about granting to the president this formidable power. He explains:

Those who are to *conduct a war* cannot in the nature of things, be proper or safe judges, whether a *war ought to be commenced, continued, or concluded*. They are barred from the latter functions by a great principle in free government, analogous to that which separates the sword from the purse, or the power of the executing from the power of enacting laws.⁸

Madison later makes an even more persuasive point: the president has the most to gain by entering a war, since it will be the commander in chief who will obtain all the glory. Therefore, a judicious congress must keep the president's ambitions in check. He states:

In no part of the constitution is more wisdom to be found than in the clause which confides the question of war or peace to the legislature, and not to the executive department. Beside the objection to such a mixture to heterogeneous powers, the trust and the temptation would be too great for anyone man; not such

⁸ James Madison (under the pseudonym "Helvidius") to Alexander Hamilton (under the pseudonym "Pacificus") in the *Gazette of the United States*, August 24, 1793.

as nature may offer as the prodigy of many centuries, but such as may be expected in the ordinary succession of magistracy. War is in fact the true nurse of executive aggrandizement. In war, a physical force is to be created; and it is the executive will, which is to direct it. In war, the public treasures are to be unlocked; and it is the executive hand which is to disperse them. In war, the honors and emoluments of office are to be multiplied; and it is the executive patronage under which they are to be enjoyed. It is in war, finally, that laurels are to be gathered; and it is the executive brow that they are to encircle. The strongest passions, the most dangerous weaknesses of the human breast; ambition, avarice, vanity, and the honorable or venial love of fame, are all in conspiracy against the desire and duty of peace. Hence it has grown into an axiom that the executive is the department of power most distinguished by its propensity to war: hence it is the practice of all states-in proportion as they are free-to disarm the propensity of its influence.⁹

Madison, the chief architect of our Constitution, could not be any clearer. Under no circumstance should a president be allowed to commence a new war or widen an old one by engaging a "new" enemy without the clear, unequivocal mandate from Congress. To do so would be a violation of his sworn oath of office to uphold the Constitution of the United States, and as such would be grounds for impeachment.

President George Washington, the father of our country, warned against the rise of an overly powerful president in his Farewell Address in 1796, urging that we remain faithful to the letter of the law as spelled out in our Constitution. Although he did not use the exact term "unitary executive," he nevertheless directly confronts this concept as dangerous and inimical to our form of government and interests of our nation. Washington raises the alarm and counsels us to guard against the usurpation and seizure of constitutional powers. He explains:

It is important, likewise, that the habits of thinking in a free country should inspire caution in those entrusted with its administration, to confine themselves within their respective constitutional spheres, avoiding in the exercise of the powers of one department to encroach upon another. The spirit of encroachment tends to consolidate the powers of all the departments in one, and thus to create, whatever the form of government, a real despotism. A just estimate of that love of power, and proneness to abuse it, which predominates in the human heart, is sufficient to satisfy us of the truth of this position. The necessity of reciprocal checks in the exercise of political power, by dividing and distributing it into different depositories, and constituting each the guardian of the public weal against invasions by the others, has been evinced by experiments ancient and modern; some of them in our country and under our own eyes. To preserve them must be as necessary as to institute them. If, in the opinion of the people, the distribution or modification of the constitutional powers be in any particular wrong, let it be corrected by an amendment in the way which the Constitution designates. But let there be no change by usurpation; for though this, in one

⁹ Madison to Hamilton in the *Gazette of the United States*, September 14, 1793.

instance, may be the instrument of good, it is the customary weapon by which free governments are destroyed. The precedent must always greatly overbalance in permanent evil any partial or transient benefit, which the use can at any time yield.

Washington is clear: no branch can encroach on the political powers specifically vested in the other branches. If "new threats" or conditions arise, Washington counsels that they should be met by amending the Constitution. He warns, however, that modification of the Constitution through encroachment or usurpation threatens the very fabric of government and democracy. The Bush Doctrine flies in the face of Washington's admonition. Whenever George Bush becomes the "decider" and unilaterally defines who the enemy is and when they should be attacked, he has intruded on the explicit domain of the Congress. Mr. Cheney and Mr. Bush repeatedly tell us that everything has changed after 9/11. "It's a new world," they tell us. It is their theme song. Well, it may be true. But if that is the case, then we must follow President Washington's advice and meet this new world by deliberation and by amending the constitution, not through passive acquiescence to an ambitious White House that seizes constitutional powers and privileges previously assigned to Congress.

Yet another of our founding fathers, Thomas Jefferson, speaks to our present condition as if he were alive today. He wrote extensively about economic policy and the danger that a swelling national debt poses to the national security. While living in Paris, his extensive correspondence with Madison often touches upon the follies of war in Europe and the way that despotic rulers sought fame and glory while bankrupting their countries in the process. He eloquently articulates that the chief executive-the president-should not be the one who decides matters of war and peace. That must be the exclusive purview of Congress who controls the purse strings. Writing to Madison on September 5, 1769, Jefferson laments:

[Europe has suffered] contagious and ruinous errors ... [due to] armed despots with means, not sanctioned by nature, for binding in chains their fellow men. We have already given in example one effectual check to the Dog of war, by transferring the power of letting him loose from the Executive to the Legislative body, from those who are to spend [the money] to those who are to pay.

We have then, a trio of voices-all of them presidents-who all unequivocally contradict Mr. Bush's and Mr. Cheney's desire to allow the president to enter into wars, unchecked by prior legislative authorization. Washington (the father of our country), Madison (the chief architect of our Constitution), and Jefferson (the author of the Declaration of Independence) all exclaim in one voice: Congress, not the President, has the right to wage war and peace. The President's role is implementation, not authorization.

International Law and its Relation to the U.S. Constitution

The United States is a signatory to the Charter of the United Nations. Violence and the threat of the use of force are specifically prohibited. Chapter 1, Article 2 states:

Section 3: All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.

Section 4: All Members shall 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.

Chapter VI of that same Charter is devoted to "Pacific Settlement of Disputes." Two of the most important regulations state:

Article 33, Section 1: The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

Article 37, Section 1: Should the parties to a dispute of the nature referred to in Article 33 fail to settle it by the means indicated in that Article, they shall refer it to the Security Council.

The process is spelled out for us: do not threaten war as a first course, but instead try to seek a solution through diplomacy and negotiation. If that fails, then the next step is to take the impasse to the Security Council. This is not only good advice; this is the *Law of the United States*, for Article VI to the U.S. Constitution states:

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.

This clause in the Constitution is critical for it places the provisions stipulated in the United Nations Charter under the umbrella of United States law. A clause in the U.N. charter is more than "advice" that we can casually ignore. On the contrary, because we are a signatory, we are bound by its provisions; they become part of the canon of U.S. law. Once again, if Mr. Bush and Mr. Cheney were to launch a preemptive attack on Iran or Syria, it would be in direct contravention of Article VI of the U.S. Constitution.

"Norm Transmission" and the Spread of Preemptive War

If we attack other nations in a preemptive way, then we encourage other nations to do the same. What's to prevent Pakistan from launching a preemptive attack against India? What would constrain China from invading Taiwan? Would North Korea justify a preemptive invasion of South Korea? Some scholars have called this process "norm transmission" and explain its looming dangers.¹⁰ Charles W. Kegley and Gregory A. Raymond explain that we are the leaders of the world. Everyone looks to us and models their behavior after ours. Kegley and Raymond correctly argue that if America continues to initiate preemptive wars across the globe (pretending that the "Bush Doctrine" makes such a practice legitimate), then that principle will spread just like copycat crimes. The whole world will erupt in a Vesuvius of preemptive strikes. Once the rule of law and diplomacy have been discarded, it will be hard to reestablish them. Is it in the interest of the United States to enshrine preemptive war as a legal basis for international relations?

From Afghanistan-to Iraq-to Iran: the Issue of "Mission Creep"

The Congress authorized the president to take military action against the Taliban and Al Qaeda as a response to the 9/11 attacks on our nation. But within months of successfully confronting our foes in Afghanistan, the President offered us a new enemy that had nothing to do with the 9/11 attacks, spooking us with rhetoric about weapons of mass destruction. The President, as the self-anointed "decider," chose to take us into Iraq under a vague and never-defined conflict that he called "The War on Terror." This is a classic example of "mission creep." We agree on a common goal, and then it transforms into something different altogether. He beat the drum; we cheered. He was determined; we were compliant. He made his call; we let him do it. Fellow citizens, the President sent the best and the bravest of the American people-the men and women who have volunteered to serve in the U.S. military-to fight, to suffer, and to die in Iraq. It is time to ask, "Why? For what reason?"

There were no weapons of mass destruction. There was no yellow cake. The aluminum tubes were not intended for nuclear enrichment. There was no Al Qaeda presence to speak of in Iraq (but there is now). There were no portable vehicles designed to launch chemical weapons. The invasion has not "paid for itself." The war did not last six weeks or six months. The Iraqis do not see us as "liberators." The invasion has not paid for itself through unfettered access to Iraqi oil. There is no "mission accomplished." There is no "freedom on the march." We have not "turned the corner in Iraq." We are not in the "last throes of the insurgency." We were supposed to establish a functioning, pluralistic democracy in Iraq, yet we have unleashed the horrors of a sectarian civil war.

Citizens, we did not ask the hard questions before the invasion of Iraq. Will we make the same mistakes today and remain silent while we prepare to attack Iran or Syria?

¹⁰ Kegley & Raymond, "Global Terrorism and Military Preemption," p. 45.

Ramifications of a Preemptive Attack on Iran & Syria in the World Community

An air strike or ground invasion against Iran or Syria would cause determined retaliation in both the short and long terms.¹¹ An escalating conflict will result in the massive loss of human life on all sides and foment an unpredictable and volatile expansion of the war on all fronts.¹² An attack against Iran or Syria would generate horrific yet incalculable consequences for our nation and the world in the immediate future and for generations to come. It would put our troops in Iraq in grave danger as the Iraqi Shiites rise up in arms to support their kindred Shiites in Iran.¹³ It would wreak havoc, for the sectarian civil war--largely confined within the boundaries of Iraq---ould transform itself into a regional war where the Iranians join together with the Iraqi Shiites and where the Saudi Arabians, Egyptians, and Jordanians intervene to protect their Sunni brethren.¹⁴ We will have infuriated all sects and factions in the Islamic World, repulsing and estranging our moderate Arab friends and allies, while engendering scores of new enemies where there were none before. We will instantly unify the multitude of warring factions who presently are jockeying for position as they vie with one another for power; a preemptive attack on Iran or Syria will cause the different factions in the Middle East to put aside their mutual loathing and join together to fight their new, common enemy--the United States of America. As the violence grows--and it will--we will lose our friends and gain new enemies. For many in the Middle East, America would no longer be seen as the beacon of the free world but as a pariah.

Violence against Americans could become widespread and commonplace in many parts of the world, including Indonesia, the Philippines, and many locations in South America and Africa. The mayhem of these--conflicts will place brave American soldiers in untenable situations where the enemy is ever changing and perpetually growing in strength, size, and conviction. International trade and commerce will become severely jeopardized. Economic security of American business interests will collapse as turbulent, destabilizing events sweep over the oil-producing regions of the world. Oil prices will skyrocket, and the economic opportunities that we have enjoyed for the last fifty years will wither.¹⁵ The killing will continue, and with each dead Iranian or Syrian, we will spawn generations of fathers and mothers, sons and daughters, all vowing to avenge their loved one's death. The killing will continue, and for each dead American soldier we will generate untold suffering to their families and loved ones.

¹¹ For analysis concerning the consequences of an attack, see Seymour Hersh, "The Coming Wars: What the Pentagon Can Now Do in Secret," *The New Yorker*, January 24, 2005; and Peter Baker, Dafua Linzer & Thomas E. Ricks, "US Is Studying Military Strike Options on Iran," *The Washington Post*, April 9, 2006.

¹² For one of the most thorough studies of the possible scenarios of how an attack on Iran would play out, consult James Fallows, "Will Iran Be Next? Soldiers, spies, and diplomats conduct a classic Pentagon war game--with sobering results," *The Atlantic Monthly*, December 2004, Sam Gardiner, a retired Air Force colonel who taught at the National War College, delivers the concluding summation: "You have no military solution for the issues of Iran. And you have to make diplomacy work,"

¹³ Kenneth Pollack, of the Brookings Institution stated "one of the things we have going for us in Iraq, if I can use that term, is that the Iranians really have not made a major effort to thwart us ." If they wanted to make our lives rough in Iraq, they could make Iraq hell." Quoted in Fallows, "Will Iran Be Next?" See also Seymour Hersh, "The Iran Plans: Would President Bush go to war to stop Tehran from getting the bomb?" *The New Yorker*, April 17, 2006.

¹⁴ For a sobering comparison of what might happen if the Iraq civil war becomes a regional one, see Helene Cooper, "The Best We Can Hope For," *The New York Times*, January 14, 2007. Particularly relevant are the concluding statements by Stephen Biddle (who authored *Military Power: Explaining Victory and Defeat in Modern Battle*).

¹⁵ "Those in the oil business I spoke to were less optimistic; one industry expert estimated that the price per barrel would immediately spike, to anywhere from ninety to a hundred dollars per barrel, and could go higher, depending on the duration and scope of the conflict." Hersh, "The Iran Plans,"

The Iranians would undoubtedly encourage their surrogates, such as Hezbollah in Lebanon, to ramp up their attacks on Israel, and a full-fledged conflict between Israel and her neighbors could easily spin out of control.¹⁶ Overnight, it could suck into its vortex the resources and fervor of the entire Islamic World. Enraged Muslims might band together to try to wipe Israel off the map, and Israel might respond with its nuclear arsenal-and where would that end?

The "unthinkable" calamity of nuclear war is made even more likely because our president has not disavowed the use of "bunker busters" against Iran's nuclear sites. The United States and Soviet Union used to have a policy promising never to *initiate* the use of nuclear weapons-it was the threat of retaliation and mutually assured destruction that served as an effective deterrent to the use of nuclear arms. Sadly, Mr. Bush has disavowed this policy and has made clear that he considers a first-strike with nuclear warheads to be one of the options in his playbook. According to Mr. Bush, Mr. Cheney, and Ms. Rice, every option is on the table-including a nuclear strike.

Epilogue

Mr. Bush has categorically failed with a plan to secure Iraq. He had no plan to secure the peace, and he had no workable plan to end the conflict. He had only infinite certitude and unfounded optimism, and taken alone, those two traits are not necessarily virtues. The judgments he has made suggest a specious lack of objectivity, diplomatic perseverance, and military acumen. A vast majority of Americans agree that it is irresponsible and strategically foolish for the president to escalate the war in Iraq against the wise counsel of the Iraq Study Group, of Generals Casey and Abeyta, and of much of the Congress. It is yet dramatically more dangerous for him to threaten to widen the conflict by spreading the war to new geographic territories and directly engaging new enemies.

A preemptive strike on Iran or Syria would produce unforeseen and calamitous consequences for the United States and the civilized world-not for years or decades, but for centuries. The Constitution itself is in peril. I respectfully submit that it is time to speak up, to debate and consider the perils facing our country, to uphold the rule of law, and to defend the Constitution of the United States-as each of us promised to do, many years ago on our first day of employment at Cal Poly. I ask that you debate and support the following resolution.

It is time to keep our promise.

¹⁶ Hersh, "The Coming Wars"; Fallows, "Will Iran Be Next?"

¹⁷ Seymour Hersh (in "The Iran Plans") confirms, "the Pentagon this winter, calls for the use of a bunker-buster tactical nuclear weapon, such as the B61-11, against underground nuclear sites." He reveals profound misgivings by the top military leaders: "A former high-level Defense Department official stated, 'There are very strong sentiments within the military against brandishing nuclear weapons against other countries,' the adviser told me. 'This goes to high levels.' The matter may soon reach a decisive point, he said, because the Joint Chiefs had agreed to give President Bush a formal recommendation stating that they are strongly opposed to considering the nuclear option for Iran." Philip Giraldi provides disturbing evidence of the White House's nuclear war plans, stating "Several senior Air Force officers involved in the planning are reportedly appalled at the implications of what they are doing-that Iran is being set up for an unprovoked nuclear attack." Philip Giraldi, "Deep Background," *The American Conservative*, August 1, 2005.

