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The Voice of the White House

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Washington, D.C., March 23, 2007: "There are two deadly financial scandals that will break or which are in the process of breaking. One is the so-called "sub prime mortgage" swindle and the other is the coming collapse of the hedge funds. In the first instance, unscrupulous mortgage vendors, deliberately target unsophisticated young potential home buyers or the elderly minorities and lured them with promises of very low rate mortgages. Of course the small print in light gray ink and 8 point type informed the poor sucker that, yes, you had a very low initial rate but soon enough, the rates could double or triple. And guess what, kids, they did. And all across America, the banks and final holders of these con jobs results found their mortgages were worthless because the holders could not pay. Of course this was well-known to the initial con men but very often not to the banks or the victims holding the mortgages. All across America, sub prime mortgages giants quietly took their profits and moved to Spain, leaving tens of thousands out on the streets and a growing number of unoccupied, and unsaleable homes. The greedy banks and other mighty financial institutions, seeing how many hundreds of millions the initial salesmen were making, rushed to invest, something they will very soon regret. While this drama is unfolding, another is in the wings, waiting to lumber onto the stage and explode. One of my friends in the FBI's White Collar Crime told me that most of the huge hedge funds are nothing but shells as their owners are operating one of the largest Ponzi schemes ever. Hundreds of billions have been looted and many of the very flush ceos and their staffs have bought homes in foreign countries to be near the billions they have looted. In the first case, it is the poor that have been deliberately screwed and in the latter, the greedy rich."

London's Cayman Islands: The Empire of the Hedge Funds

March 9, 2007

by Richard Freeman

Executive Intelligence Review.

On Feb. 27, the world's hedge funds, through their manipulation and miscalculation of the yen carry-trade, led to a violent unwinding of that carry-trade, which triggered disintegration of the world financial structure. Stock exchanges fell, from the Dow Jones exchange in the United States, to China's Shanghai composite index, to Brazil's Bovespa index, shedding more than \$1.5 trillion in paper losses. Secondary incidents contributed to setting off the downturn. But hedge funds had already bled the major international commercial banks and corporations into absolute bankruptcy, and had leveraged borrowed funds and derivatives into the biggest financial tumor ever. That, combined with their yen carry-trade role, amplified the effect of the secondary incidents, and is now driving the financial system further into systemic breakdown.

And where are those hedge funds? Though they may have offices in locations like Greenwich, Connecticut, or New York City, 8,282 out of the total of 9,800 hedge funds operating at the end of the third quarter 2006 worldwide, were registered in the Cayman Islands, a British Overseas Territory, run like a dictatorship by a Royal Governor appointed by Queen Elizabeth II, with a total population of 57,000 people.

There is good reason for this. The Cayman Islands Monetary Authority (CIMA) is supposed to "regulate" the hedge funds, but instead runs a protection racket for their derivatives trading and tax sheltering. The CIMA gives each hedge fund, at registration, a 100-year exemption from any taxes; shelters the fund's activity behind a wall of official secrecy; allows the fund to self-regulate; and prevents other nations from regulating the funds by insisting on first and final authority in this area.

And the remainder of the world's hedge funds, not registered in the Cayman Islands? Most are registered in other British Overseas Territories and satrapies, such as the

Global Financial Oligarchy's Instrument

Since mid-January, forces internationally—ranging from the Danish government, to German Vice Chancellor Franz Müntefering (who has famously labeled hedge funds "locusts"), to U.S. Sen. Carl Levin (D-Mich.)—have directed initiatives geared to regulating, and potentially bringing under control the predatory activities of the world's hedge funds. For his efforts, Müntefering was outrageously attacked on Feb. 14 by the German edition of the Financial Times, the London financier oligarchy's mouthpiece, as an "anti-Semite."

The Müntefering, Levin, and other initiatives, though reflecting a well-intentioned impulse, don't recognize the real nature of the beast; accordingly, they will not solve the problem. For the Anglo-Dutch oligarchy, closely intertwined banks and hedge funds are its foremost instruments of power, to control the financial system, and loot and devastate companies and nations. Recognizing that this financial system is fracturing, the oligarchy will go to general nuclear war against Iran, Russia, and China, rather than lose its instruments of power. Therefore, it is impossible to think of hedge-fund reform in the United States, or in Germany, because the real source of power of hedge funds in these countries, lies outside in the Cayman Islands, ensconced in a fortified shell. Leaders such as Müntefering or Levin, must be prepared to break the power of the Cayman Islands—which means the death grip of the Anglo-Dutch oligarchy, if they are to achieve anything of value at all.

This oligarchy made changes in the Cayman Islands so that the hedge-fund "slime-mold" would find hospitable grounds for growth. The hedge funds' growth in the Caymans, in turn, fueled their growth internationally.

The three island specks in the Caribbean Sea, 480 miles south from Florida's southern tip—which came to be known as the Caymans, after the native word for crocodile (caymana)—had for centuries been a basing area for pirates who attacked trading vessels.

Though under British rule for centuries, the Caymans officially became a British Crown Colony in 1971, though later the term was changed to the euphemistic moniker British Overseas Territory; then as now, Queen Elizabeth II rules firmly, appointing the Islands' Governor, etc.

In 1993, the decision was made to turn this tourist trap into a major financial power, through the adoption of a Mutual Funds Law, to enable the easy incorporation and/or registration of hedge funds in a deregulated system. (Technically, a hedge fund is a type of mutual fund, but not your grandfather's type.*) According to a firm that incorporates hedge funds, "The Mutual Fund Law was established ... to position the Cayman Islands as a hub in the financial industry."

According to representatives of Charles Adams, Ritchie & Duckworth, a Cayman Islands law firm that is involved in the hedge-fund business, the Cayman Islands offer prospective hedge funds:

"No regulatory restriction on investment policies or strategies, commercial terms..., or choice of service providers...."

"Tax-neutral environment with no direct corporation, capital gains, income, profits or withholding taxes applicable to funds" (emphasis added).

The ease of setting up a hedge fund was brought home in a telephone discussion with a member of the Cayman Islands Monetary Authority, which is charged with "regulating" them. From the day of application, it takes but two to five days for a hedge fund to be approved, and costs \$3,600 in total fees, a mere drop in the bucket. To invest in a hedge fund, an investor must put up at least \$100,000. From then onward, the hedge fund must produce an annual account, audited by a Caymans local accountant. If one recalls how Arthur Andersen LLP and other accountants carried out audits in recent years, it is apparent that this does not have to be a high hurdle.

The only information that the CIMA will release about a hedge fund, is that it is

registered, and where its registered office is. The names of investors and other minimal information are kept strictly secret. Since the Cayman Islands have no tax laws, the CIMA shares little or no information with other nations' authorities on tax matters. On other matters, it is up to the CIMA whether it will "share or divulge information."

On the whole, neither the United States' Securities and Exchange Commission, nor other countries' regulatory bodies, have any regulatory authority over hedge funds. Moreover, neither the SEC, nor other bodies, have pierced the CIMA's armor.

The 1993 Mutual Fund Law had its effect: with direction from the City of London, the number of hedge funds operating in the Cayman Islands exploded: from 1,685 hedge funds in 1997, to 8,282 at the end of the third quarter 2006, a fivefold increase. Cayman Island hedge funds are four-fifths of the world total. Globally, hedge funds hold \$1.44 trillion in assets under management, but through using leverage of anywhere from 5 to 20 times, they command up to \$30 trillion of deployable funds.

But the Anglo-Dutch oligarchy built an entire financial superstructure on the Cayman Islands. Aside from the Caymans' huge holdings of hedge-fund assets, the Islands' banking system possesses assets of \$1.41 trillion (though this includes some overlap with the hedge fund assets). The offshore, unregulated Cayman Islands has the fourth-largest banking system in the world—after those of the United States, Japan, and Britain. Compare: The United States has 300 million people, the Cayman Islands has 57,000.

The Cayman Islands also is the world's number-two jurisdiction for captive insurance companies (a type of limited-purpose, and increasingly speculative insurance company). Cayman licensees hold \$29.6 trillion in assets.

The Queen's Men

To have the Caymans function as an epicenter for globalization and financial warfare, the Anglo-Dutch oligarchy hand-selected the top Cayman officials.

Since late 2005, the Governor of the Islands, approved by the office of the Queen, is Stuart Duncan Jack, a career officer of the British Foreign Office. For his service, Jack was knighted Commander of the Royal Victorian Order, a chivalric order founded by Queen Victoria, which ranks above that of the Order of the British Empire.

Timothy Ridley, the chairman of the vital Cayman Islands Monetary Authority, is a lawyer who was knighted as a member of the Order of the British Empire for his role in building up the hedge funds and their infrastructure during the 1990s.

Two Americans on the board of the CIMA, further indicate the nasty character of that institution.

Warren Coats, who served for 26 years with the International Monetary Fund, was called in by the United States to be an advisor to Iraq and Afghanistan on "rebuilding money and banking systems"—which has resulted in disaster.

Richard Rahn, a member of the Mont Pelerin Society, the oligarchy's coordinating center for deregulation and elimination of the nation-state, is also the head of the Center for Economic Growth. This Center is an offshoot of the rightist FreedomWorks Foundation, run by C. Boyden Gray, heir of the Reynolds Tobacco fortune; and by former House Majority Leader Dick Armey (R-Tex). Rahn's buddy and intelligence operative Gray helped arrange the European Union Savings Directive, which permitted the Cayman Islands government to exempt the hedge funds there from reporting to European countries their "cross-border income."

In addition to the Caymans, the offshore British Virgin Islands has over 2,000 hedge funds registered, and Bermuda has over 500. (Note that the total number of hedge funds officially registered in British outposts, combined, exceeds the world total, in this unregulated sector.)

The Real Enemy

With the power accumulated from these unregulated offshore British outposts led by the Cayman Islands, the Anglo-Dutch financial oligarchy has assembled an incredible

strike force, above and against the interest of nation-states.

Hedge funds are the dominant force in the Japanese yen and to an extent, the Swiss franc carry-trade. The carry-trade has provided an enormous source of liquidity for some of the most risky derivatives and leveraged financial games in the world. The unwinding of this trade, represented by the 3.6% appreciation of the yen from Feb. 26 to March 2, by itself can bring down the world financial system.

According to reports, during 2005, the hedge funds were responsible for up to 50% of the transactions on the London and New York stock exchanges.

Senators Carl Levin and Norm Coleman (R-Minn.)—chairman and ranking member of the Senate Permanent Investigations Subcommittee of the Homeland Security Committee—have shown that the hedge funds are a center for circulating hundreds of billions of dollars in hot-money flows and tax shelters. They document a case of the brothers Sam and Charles Wyly of Texas, who used two Cayman Island hedge funds to store and shelter \$300 million from taxes in the United States.

The hedge funds are among the biggest speculators in some of the most precarious derivatives instruments, like credit derivatives, and collateralized debt obligations (CDOs), which are adding instability to the shaking world financial system.

The hedge funds are leading a frenzied wave of mergers and acquisitions, which reached nearly \$4 trillion last year, and they are buying up and stripping down companies from auto parts producer Delphi and Texas power utility TXU, to Office Equities Properties, to hundreds of thousands of apartments in Berlin and Dresden, Germany.

This has led to hundreds of thousands of workers being laid off.

They are assisted by their Wall Street allies. Taken altogether, the hedge funds, with money borrowed from the world's biggest commercial and investment banks, have pushed the world's derivatives bubble well past \$600 trillion in nominal value, and put the world on the path of the biggest financial disintegration in modern history.

At the same time, in this Anglo-Dutch mix are the big banks, like the British Crown's Dope, Inc. bank, the Hong Kong and Shanghai Bank, Europe's biggest; and the Dutch ABN-Amro, which owns the old-line British Empire investment bank Barings. With this integrated force, using the Cayman Islands as a basing operation, the Anglo-Dutch Liberals have leverage over the world financial system.

The hedge funds' wild forays cannot be controlled by neat resolutions on open reporting. The hedge-fund issue involves the Anglo-Dutch oligarchy, which believes it is in an end-game war, and will do anything to preserve its power. This is the level of the fight by any force serious about tackling the hedge-fund question.

* EIR's "Glossary of the Global Financial Casino," published May 27, 2005, defines a hedge fund as "a form of mutual fund used by wealthy individuals and institutions to engage in aggressive speculative activities prohibited to ordinary mutual funds. Hedge funds are restricted by law to no more than 100 investors per fund, and these investors are presumed to be sufficiently knowledgeable to understand the risks. Most hedge funds have extremely high minimum investment amounts ranging from \$250,000 to well over \$1 million.

US House votes for Iraq deadline

March 23, 2007

BBC News

The House of Representatives has voted in favour of ordering President George W Bush to pull US troops out of Iraq.

The bill imposes a 31 August 2008 deadline for the withdrawal of all US combat troops from the country.

It was passed by 218 votes to 212 by the Democratic-controlled House. Correspondents say it is the biggest challenge yet to Mr Bush's war policy.

The president quickly responded that he would veto the bill, which he called an "abdication of responsibility".

A grim-faced President Bush said the vote, which was largely along partisan lines, was an effort to "force me to accept restrictions on our commanders, an artificial timetable for withdrawal and their pet spending projects".

"This is not going to happen," he said.

The White House says legislators should allow more time for Mr Bush's "surge" strategy - which includes sending 28,000 extra troops to Iraq - to work.

'High stakes'

The Senate is expected to vote next week on legislation similar to the House bill.

To pass the Senate version, the Democrats would need the support of about a dozen Republican senators.

The House vote was a victory for the Democratic leader, Nancy Pelosi.

"The American people have lost faith in the president's conduct of this war," she said during the debate on the bill, which was primarily to authorise \$124bn (£62bn) in funding for US troops in Iraq and Afghanistan.

"The American people see the reality of war. The president does not."

However some Democratic representatives voted against the bill, because they want to put an immediate end to the war.

Others opposed it because it could make the work of military commanders more difficult.

Most Republicans opposed the legislation, which they said would represent an admission of failure in Iraq.

"The stakes in Iraq are too high and the sacrifices made by our military personnel and their families too great to be content with anything but success," Republican Roy Blunt said.

The House bill calls for the withdrawal of troops to begin as early as July 2007 if there is no evidence progress is being made in bringing order to Iraq.

New Developments in the U.S. Attorney Controversy:

Why Bush Refuses to Allow Karl Rove and Harriet Miers to Testify Before Congress, and What Role New White House Counsel Fred Fielding May Play

March 23, 2007

by John W. Dean

SindLaw

At the outset of this column -- which discusses Bush's new White House Counsel, Fred Fielding -- I must acknowledge that I am the person who first hired, and brought Fielding into the government. He served as my deputy in the Nixon White House, and was untouched by Watergate, because I shielded all my staff from that unpleasant business. Fred is an able lawyer, and now finds himself in the hot seat, with President Bush seemingly looking for a fight with Congress. (But that's what makes the job interesting.)

One further disclosure: I have never been an advocate of executive privilege, except as it might relate to the most sensitive national security information. To the

contrary, you show me a White House aide who does not want his conversations and advice to the president revealed, and I will show you someone who should not be talking with or advising a president.

Of course, I do not know what is transpiring behind closed doors at the White House right now. But I do believe there is more occurring than meets the eye with respect to the potential confrontation developing between the Democratic Congress and the Bush White House. On the surface, the clash appears rather simple: Congress wants information, and Bush does want to provide it if it means breaching the sanctity of the realm in which he receives advice from his aides privately. But this surface conflict, as I will explain, does not get to the bottom of this developing dust-up.

In truth, much more is at stake here for both the Congress and the White House than this bare description of the conflict would indicate. These issues strike at the heart of what post-Watergate conservative Republicans seek to create: an all-powerful presidency. Thus, for the same reason that Vice President Cheney went to extreme lengths to block Congress from getting information about the work of his National Energy Task Force, as I discussed in prior columns such as [this one](#), I expect President Bush to take what will appear to be a similar irrational posture. For both Bush and Cheney, virtually any limit on presidential power is too great.

And this conflict, in the end, is all about presidential power. Moreover, underlying the Administration's defense of unchecked power, is a term that has not been heard since Justice Alito's confirmation hearings: "the unitary executive theory." Once, conservatives rejected a strong presidency. Today, however, the opposite is the case, and the unitary executive theory is central to their argument.

Clashing institutions make good news copy. But understanding why two co-equal branches of our government each have such strong feelings about their need to prevail in this conflict, may help to get to the heart of the matter.

The Contemporary Conservative Vision of Executive Power: A Strong Presidency

In [a piece last year](#) for *The New Republic's* July issue, legal journalist Jeffery Rosen summed up George W. Bush's outlook on the presidency: "One of the defining principles of the Bush administration has been a belief in unfettered executive power. Indeed, President Bush has taken the principle to such unprecedented extremes that an ironic reversal has taken place: A conservative ideology that had always been devoted to limiting government power has been transformed into the largest expansion of executive power since FDR."

Rosen reported that Bush's perspective is not "mere political opportunism--a cynical rationale devised after September 11 to allow the president to do whatever he likes in the war on terrorism." Rather, Rosen explained, Bush's actions stem from his embrace of the "unitary executive theory." (Of course, Bush may not himself have mastered the fine points of this theory, but it is clear he understands the core idea, and acts accordingly.)

Bush's governing style is not surprising to those who took a close look at how he governed before he arrived in Washington. Indeed, the perceptive conservative commentator George Will saw it coming.

Will visited Governor Bush in Texas in 1999, and talked as well with the team Bush had assembled to work on his presidential campaign. "They are recasting conservatism by expunging the traditional conservative ambivalence about presidential power," Will reported at the time. "Hence the presence on the cluttered desk of chief speechwriter Mike Gerson of Terry Eastland's book, [Energy in the Executive: The Case for the Strong Presidency](#). Eastland's title comes from Alexander Hamilton's Federalist Paper Number 70: 'Energy in the executive is a leading character in the definition of good government.'" Will then explained the theory that would turn out, later, to be Bush's bottom line: "Eastland's thesis is that 'the strong presidency is necessary to effect ends sought by most conservatives.'"

Strikingly, Will concluded his report with a savvy prediction: "A second Bush presidency would be more muscular than the first in exercising executive power." Will, obviously, made this prediction long before 9/11. His article and his take on the situation are thus excellent evidence that [even in a hypothetical world without 9/11](#), we still would have seen additional executive power grabs from a second-term President Bush.

I raise Terry Eastland's book, in particular, because I have always believed it has been something of a bible for Bush II and his staff. The book is also directly related to the "unitary executive theory." Eastland draws his view of the presidency from the same source attorneys in the Reagan Administration Justice Department's Office of Legal Counsel did, when they came up with the phrase "unitary executive theory" to describe their effort to provide legal justification for the President's taking increasingly aggressive control of the executive branch. At that time, the clash was between the Executive and the independent regulatory agencies, but the principle was the same.

The source upon which both Eastland and those who coined the "unitary executive" theory relied, of course, was Hamilton's Federalists No. 70 -- as I will discuss further below.

What Exactly Is the Unitary Executive Theory? A Short Answer

Before the Alito confirmation hearings, [Washington Post reporter Dana Milbank](#) correctly described the "unitary executive theory" as an "obscure philosophy ... that favors an extraordinarily powerful president." Milbank found an invocation of this philosophy in the notorious "torture memos."

For example, Milbank quoted a passage from one of the memos that was laced with conservative pipe-dream rhetoric: "The Framers understood the [Commander in Chief] clause as investing the president with the fullest range of power," the memo claimed, including power over "the conduct of warfare and the defense of the nation unless expressly assigned in the Constitution to Congress." Such power was given, the memo theorized, because "national security decisions require the unity in purpose and energy in action that characterize the presidency rather than Congress." (Conservative scholars, I have discovered, have a unique skill of channeling the thinking of the Founders in their writing.)

When the obscure philosophy surfaced during the Alito hearings, [Writ guest columnist Jennifer Van Bergen](#) assembled a brisk overview of its salient points. But for a quick and a bit more in-depth course in Unitary Executive Theory 101, I would suggest [an analysis by Loyola Law School Professors Karl Manheim and Allan Ides](#).

Professors Manheim and Ides trace the origins, evolution, and current uses of the unitary executive theory. While it is beyond the scope of their analysis, they also, along the way, provide information useful to deconstruct and critically analyze this concocted effort at legal (and historical) legerdemain. This is not the place for me to unload on this hogwash theory, but I must pause to comment, at least, on its purported links to Alexander Hamilton's purported vision of "a unitary executive."

This was not remotely Hamilton's vision. Listen, for example, to what Morton Rosenberg says; he is a specialist in American Public Law at the non-partisan Congressional Reference Service of the Library of Congress, and he is described by many of those who know him as the smartest guy in the place. Rosenberg was one of the first to correct this loopy scholarship when it began appearing in the early 1980s.

Rosenberg places Hamilton in a realistic context, as he knocks down several shaky pillars upon which unitary executive theorists have tried to build: "The framers had no reason to envisage the management of an industrial nation as the essential function of the office [of the president.],” Rosenberg explains. "Whatever managerial insights Hamilton had were confined to commerce, banking, and monetary policy.... Nor did [the framers] conceive of the presidency as an institutionalized representation of popular will distinct from, let alone capable of opposition to, the will expressed by the legislature. Even Hamilton's most strenuous defenses of executive authority emphasized the president's role as the managerial agent for the legislature, not his popular independence in reflection of some other popular will."

Manheim and Ides explain that the essence of the unitary executive "theory" is "more about power than it is about law." And power, here, means presidential power: The "unitary executive" theory is a theoretical, legal, historical, and Constitutional hook conservatives have invented to expand presidential power.

These "unitarians" postulate, as Manheim and Ides note, "that the authority to enforce federal law and to implement federal policy rest exclusively in the Executive Branch and, most importantly, the ultimate prerogative over this executive function is

vested solely and completely in the President, who sits atop the hierarchy of executive power and responsibility." This exclusivity, in the unitarians' view, precludes any but the most minimal role for Congress: Its role, they believe, is simply to decide whether to appropriate money; otherwise, it must butt out completely.

The Relationship of Unitary Executive Theory and Executive Privilege

Eastland's tutorial, set forth in his book, instructed President Bush and his staff to make a big deal out of protecting presidential prerogatives. So, too, does the unitary executive theory, which was developed at the same time that Reagan's Justice Department was doing what Presidents Ford and Carter had been too wary to do: revive Executive Privilege. Neither Ford nor Carter issued guidelines for the executive branch regarding the use of this privilege, for Nixon had given it such a bad name they dared not use it. But the Reagan Administration dared, and did.

Indeed, Reagan's Attorney General, William French Smith had the nerve to issue a memorandum opinion expressly relying on *U.S. v Nixon* -- the famous Nixon tapes case. In the language quoted by French, the Supreme Court concluded: "The expectation of a President to the confidentiality of his conversations and correspondence ... has all the values to which we accord deference for the privacy of all citizens and, added to those values, is the necessity for protection of the public interest in candid, objective, and even blunt or harsh opinions in Presidential decision-making. A President and those who assist him must be free to explore alternatives in the process of shaping policies and making decisions and to do so in a way many would be unwilling to express except privately. These are the considerations justifying a presumptive privilege for Presidential communications. The privilege is fundamental to the operation of Government and inextricably rooted in the separation of powers under the Constitution."

The point that French, elided, however, was that the Court had rejected Nixon's claim of an unqualified privilege, and directed that the tapes be produced for in camera inspection (that is, inspection that is secret even from the parties and their attorneys) by the relevant court.

Moreover, in explaining its holding, the Court reasoned as follows: "[W]hen the privilege depends solely on the broad, undifferentiated claim of public interest in the confidentiality of such conversations, a confrontation with other values arises. Absent a claim of need to protect military, diplomatic, or sensitive national security secrets, we find it difficult to accept the argument that even the very important interest in confidentiality of Presidential communications is significantly diminished by production of such material for in camera inspection...."

Not only did this holding result in the rejection of an executive privilege claim, it is also quite vague, and it applies to a judicial, not a legislative subpoena. Nevertheless, Attorney General Smith drew upon it to opine, consistent with the philosophy of protecting presidential prerogatives, that "[t]he interest of Congress in obtaining information for oversight purposes is, I believe, considerably weaker than its interest when specific legislative proposals are in question."

Thus, Smith encouraged President Reagan (and presidents generally) to deny information to Congress when conducting oversight, except "in the most unusual circumstances."

Past Is Probably Not Prologue for Bush: The Gorsuch Fiasco

Interestingly, however, to the displeasure of many, Reagan's White House Counsel Fred Fielding -- now at the center of the current clash, as Bush's counsel -- did not protect the president's prerogatives as vigorously as Reagan's Attorney General would have preferred.

A leading scholar on Executive Privilege, Mark Rozell, reports that although "President Reagan invoked executive privilege on several occasions, he never fully exercised that power. When confronted by congressional demands for information, Reagan generally followed a pattern of initial resistance followed by accommodation of Congress's request. Reagan never made a concerted effort to defend his prerogative in this area. As a result, he further weakened a constitutional presidential power"

How much of Reagan's reluctance to press the "executive privilege" issue derived

from Fielding, Reagan himself, or other Reagan aides, is not known. Also, some of the criticism of Reagan's decision not to aggressively assert the privilege occurred largely after Fielding had left. For instance, Vice President Cheney later insisted that Reagan provided too much information to Congress during their Iran-Contra investigation.

Fielding was White House Counsel, however, during one of the more thrilling episodes involving executive privilege -- one that could parallel the current situation, with Congress calling for testimony by White House aide Karl Rove and former aide Harriet Miers. In explaining what happened back in 1982, I've drawn heavily on -- paraphrasing, greatly abbreviating, and then quoting -- Mark Rozell's report:

Two House committees issued subpoenas to EPA Administrator Anne Gorsuch, directing her to appear before Congress with certain documents. Gorsuch was prepared to turn over the documents, but the Justice Department urged President Reagan to assert executive privilege. When he did so, White House Counsel Fielding assured Gorsuch that "the administration would stand solidly behind this claim of executive privilege."

When Gorsuch invoked the privilege, both committees voted to hold her in contempt, and on December 16, 1982, the House of Representatives voted 259-105 to find her in contempt of Congress. Immediately following the House vote, however, the Justice Department filed civil suit against the House of Representatives. Then, rather than follow the language of the contempt statute, the U.S. Attorney for the District of Columbia -- obviously after being instructed by the Justice Department regarding this matter- refused to "bring the matter before the grand jury for their action" while the suit against the House was pending. (It was a delaying ploy.)

The House requested that the federal district court dismiss the civil lawsuit, which the court did. The court also encouraged the two branches "to settle their differences without further judicial involvement" and warned that "[i]f these two co-equal branches maintain their present adversarial positions, the Judicial Branch will be required to resolve the dispute by determining the validity of the Administrator's claim of executive privilege."

Two weeks later, the Administration made a deal with one of the congressional committees, agreeing to a limited disclosure of the requested information. Again, EPA administrator Gorsuch pushed for full disclosure, but the White House disagreed. Meanwhile, the other congressional committee would not agree to a limited release and continued to press for full disclosure, advising the White House that the investigations would continue until the documents were provided.

Having had enough, Gorsuch resigned her position as head of EPA when the White House finally agreed to release its documents Congress wanted. Following the contempt statute, the U.S. attorney presented a contempt citation to a grand jury, which unanimously declined to indict Gorsuch.

Rozell concludes, "Although the administration initially had taken a strong stand on executive privilege, it backed down in the face of mounting political pressure. The decision to compromise did not settle the executive privilege controversy. The House Committee on the Judiciary further investigated the Justice Department role in the controversy and concluded that the department had misused executive privilege by advocating the withholding of documents that had not been thoroughly reviewed. The committee also alleged that the department withheld documents to cover up wrongdoing at EPA. The administration's compromise served as a temporary political expedient which eventually allowed Congress to examine previously withheld documents and draw broader conclusions about the exercise of executive privilege. Reagan may have won a temporary reprieve from political pressures, but he had lost ground in his effort to re-establish the viability of the doctrine of executive privilege."

It Seems Likely Bush, with Fielding, Will Go to the Wall on Executive Privilege

This time, it is my belief that Bush -- unlike Reagan before him -- will not blink. He will not let Fielding strike a deal, as Fielding did for Reagan. Rather, Bush feels that he has his manhood on the line. He knows what his conservative constituency wants: a strong president who protects his prerogatives. He believes in the unitary executive theory of protecting those prerogatives, and of strengthening the presidency by defying Congress.

In short, all those who have wanted to see Karl Rove in jail may get their wish, for

he will not cave in, either -- and may well be prosecuted for contempt, as Gorsuch was not. Bush's greatest problem here, however, is Harriett Miers. It is dubious he can exert any privilege over a former White House Counsel; I doubt she is ready to go to prison for him; and all who know her say if she is under oath, she will not lie. That could be a problem.

Navy Lacks Plan to Defend Against `Carrier-Destroying' Missile

March 23, 2007

by Tony Capaccio

Bloomberg

The U.S. Navy, after nearly six years of warnings from Pentagon testers, still lacks a plan for defending aircraft carriers against a supersonic Russian-built missile, according to current and former officials and Defense Department documents.

The missile, known in the West as the "Sizzler," has been deployed by China and may be purchased by Iran. Deputy Secretary of Defense Gordon England has given the Navy until April 29 to explain how it will counter the missile, according to a Pentagon budget document.

The Defense Department's weapons-testing office judges the threat so serious that its director, Charles McQueary, warned the Pentagon's chief weapons-buyer in a memo that he would move to stall production of multibillion-dollar ship and missile programs until the issue was addressed.

"This is a carrier-destroying weapon, *said Orville Hanson, who evaluated weapons systems for 38 years with the Navy.* "That's its purpose.

"Take out the carriers *and China can walk into Taiwan*, he said. China bought the missiles in 2002 along with eight diesel submarines designed to fire it, according to Office of Naval Intelligence spokesman Robert Althage.

A Pentagon official, speaking on condition of anonymity, said Russia also offered the missile to Iran, although there's no evidence a sale has gone through. In Iranian hands, the Sizzler could challenge the ability of the U.S. Navy to keep open the Strait of Hormuz, through which an estimated 25 percent of the world's oil traffic flows.

Fast and Low-Flying

"This is a very low-flying, fast missile, *said retired Rear Admiral Eric McVadon, a former U.S. naval attache in Beijing.* "It won't be visible until it's quite close. By the time you detect it to the time it hits you is very short. You'd want to know your capabilities to handle this sort of missile.

The Navy's ship-borne Aegis system, deployed on cruisers and destroyers starting in the early 1980s, is designed to protect aircraft-carrier battle groups from missile attacks. But current and former officials say the Navy has no assurance Aegis, built by Lockheed Martin Corp., is capable of detecting, tracking and intercepting the Sizzler.

"This was an issue when I walked in the door in 2001," Thomas Christie, the Defense Department's top weapons-testing official from mid-2001 to early 2005, said in an interview.

'A Major Issue'

"The Navy recognized this was a major issue, and over the years, I had continued promises they were going to fully fund development and production *of missiles that could replicate the Sizzler to help develop a defense against it*, Christie said. "They haven't.

The effect is that in a conflict, the U.S. "would send a billion-dollar platform loaded with equipment and crew into harm's way without some sort of confidence that we could defeat what is apparently a threat very near on the horizon," Christie said.

The Navy considered developing a program to test against the Sizzler "but has no plans in the immediate future to initiate such a developmental effort," Naval Air Systems Command spokesman Rob Koon said in an e-mail.

Lieutenant Bashon Mann, a Navy spokesman, said the service is aware of the Sizzler's capabilities and is "researching suitable alternatives to defend against it." "U.S. naval warships have a layered defense capability that can defend against various missile threats, Mann said.

Raising Concerns

McQueary, head of the Pentagon's testing office, raised his concerns about the absence of Navy test plans for the missile in a Sept. 8, 2006, memo to Ken Krieg, undersecretary of defense for acquisition. He also voiced concerns to Deputy Secretary England.

In the memo, McQuery said that unless the Sizzler threat was addressed, his office wouldn't approve test plans necessary for production to begin on several other projects, including Northrop Grumman Corp.'s new \$35.8 billion CVN-21 aircraft-carrier project; the \$36.5 billion DDG-1000 destroyer project being developed by Northrop and General Dynamics Corp.; and two Raytheon Corp. projects, the \$6 billion Standard Missile-6 and \$1.1 billion Ship Self Defense System.

Charts prepared by the Navy for a February 2005 briefing for defense contractors said the Sizzler, which is also called the SS-N-27B, starts out flying at subsonic speeds. Within 10 nautical miles of its target, a rocket-propelled warhead separates and accelerates to three times the speed of sound, flying no more than 10 meters (33 feet) above sea level.

Final Approach

On final approach, the missile "has the potential to perform very high defensive maneuvers," including sharp-angled dodges, the Office of Naval Intelligence said in a manual on worldwide maritime threats.

The Sizzler is "unique," the Defense Science Board, an independent agency within the Pentagon that provides assessments of major defense issues, said in an October 2005 report. Most anti-ship cruise missiles fly below the speed of sound and on a straight path, making them easier to track and target.

McQueary, in a March 16 e-mailed statement, said that "to the best of our knowledge, the Navy hasn't started a test program or responded to the board's recommendations." "The Navy may be reluctant to invest in development of a new target, given their other bills, he said.

'Aggressively Marketing'

The Sizzler's Russian maker, state-run Novator Design Bureau in Yekaterinburg, is "aggressively marketing" the weapon at international arms shows, said Steve Zaloga, a missile analyst with the Teal Group, a Fairfax, Virginia-based defense research organization. Among other venues, the missile was pitched at last month's IDEX 2007, the Middle East's largest weapons exposition, he said.

Zaloga provided a page from Novator's sales brochure depicting the missile.

Alexander Uzhanov, a spokesman for the Moscow-based Russian arms-export agency Rosoboronexport, which oversees Novator, declined to comment.

McVadon, who has written about the Chinese navy, called the Sizzler "right now the most pertinent and pressing threat the U.S. faces in the case of a Taiwan conflict." *Jane's*, the London-based defense information group, reported in 2005 in its publication "Missiles and Rockets" that Russia had offered the missile to Iran as part of a sale in the 1990s of three Kilo-class submarines.

That report was confirmed by the Pentagon official who requested anonymity. The Office of Naval Intelligence suggested the same thing in a 2004 report, highlighting in

its assessment of maritime threats Iran's possible acquisition of additional Russian diesel submarines ``with advanced anti-ship cruise missiles."

The Defense Science Board, in its 2005 report, recommended that the Navy ``immediately implement" a plan to produce a surrogate Sizzler that could be used for testing.

``Time is of the essence here," the board said.