

Subj: **Aid and Comfort, but not treason (revised!)**  
Date: 2/12/2004 11:16:50 AM Eastern Standard Time  
From:  
To:

Folks,

Good info from Al Carpenter, former USN A4 pilot, VA-72-"The Bluehawks"-  
POW for 6.5 years in Hanoi and all around great guy!

JR aka Dick

----- Forwarded message -----

From: "Al Carpenter"

All:

Some of you have been following this Kerry thread with me for a few days

most have not. Those who have, will find additional information in this  
revised edition. All should find the information contained in this  
forward

from attorney/author Hank Holzer to be interesting and enlightening.

What

you do with it, if anything, is, of course, completely up to each of you!

I

just thought you would like to have the chance to read it!

Al

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----- Original Message -----

From: "Henry Mark Holzer"

Sent: Wednesday, February 11, 2004 10:44 PM

Subject: Aid and Comfort, but not treason

> This is a reworked version of a piece I recently wrote. It was sparked  
by  
what was on the Internet today about General Giap's statement, as  
reported  
by Oliver North.

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> \*\*\*\*\*  
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> KERRY'S ACHILLES HEEL  
>  
> Not surprisingly, John Kerry's emergence as the democrat frontrunner  
has

caused an explosion of anti-Kerry sentiment on the Internet. Indeed, the Internet is ablaze with true and untrue Kerry stories, much deserved condemnation of the Senator, and even loud allegations that he has committed

"treason." As a lawyer and law professor thoroughly familiar with the crime

of treason, I can say unhesitatingly that this latter charge, as much as it

might be psychologically satisfying to make, is unsupportable legally.

It

is also dangerous tactically.

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> In the book "Aid and Comfort": Jane Fonda in North Vietnam (co-authored with my wife, Erika Holzer; see [www.hanoijane.net](http://www.hanoijane.net)) we made a point about Fonda that is now doubly applicable to Kerry. We wrote that untrue stories

(like the urban legend that Fonda ratted on American POWs in Hanoi) enable

the targets of those tall tales to discredit true stories: "Since the untrue story is untrue, all else must be untrue."

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> Equally, to accuse Kerry of treason enables him to accuse his critics of shooting from the hip and not knowing what they're talking about—even as to charges that are true.

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> An excellent example of this phenomenon—being distracted from making legitimate attacks by shooting at straw men—was when Representatives Jim McDermott (D-Wash), Mike Thompson (D-Cal), and David Bonior (D-Mich) made a

pilgrimage to Saddam Hussein's Iraq just before the coalition's invasion. There, they toured, posed for pictures, and schmoozed with Iraqi officials.

And while in Iraq, McDermott made critical comments about the United States

and said he'd trust Saddam Hussein before he'd trust his own President, George W. Bush.

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> Understandably, a firestorm erupted—especially on the political right. Predictably, there were calls to charge the three Baghdad Boys with treason—erroneously analogizing their conduct to Jane Fonda's during the Vietnam War. However, for the very reasons we concluded in "Aid and Comfort" that Fonda was indictable and convictable for treason, the

Baghdad

Boys were not.

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> Nor is John Forbes Kerry.

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> There are three crimes expressly mentioned in the Constitution, only one

of which is actually defined. Article I, Section 8, gives Congress power to punish counterfeiting, and to define and punish piracy; neither is actually defined. However, Article III, Section 3, provides that: "Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court."

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> As we explained in "Aid and Comfort," the Supreme Court of the United States, has interpreted the treason section of the Constitution to require four elements for indictment and conviction: (1) an intent to betray the United States, (2) an overt act, (3) proved by two witnesses, (4) providing aid and comfort."

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> In Jane Fonda's case, she traveled to North Viet Nam during hostilities, made broadcasts (tapes of which were relentlessly played to our POWs), held press conferences, provided photo ops for the Communists, attacked the United States and its leaders, exploited American prisoners of war, fraternized with North Vietnamese military and civilian leaders—and was thanked for her efforts by grateful, top level Communist leaders. This is why in "Aid and Comfort" we concluded that, given the law of treason, and given Fonda's conduct, there was more than sufficient evidence to support an indictment and a conviction for treason.

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> It was understandable that people equated what the three Congressmen did in Iraq with what Jane Fonda did in North Vietnam. The parallels were there—but only up to a point. Fonda traveled to North Vietnam at a time when the United States was actively engaged in hostilities with that country: a large-scale air, ground, and sea conflict. McDermott, Thompson, and Bonior traveled to Iraq at a time when the United States was actively engaged in hostilities with Iraq: an air campaign in the "no-fly" zones.

In

both situations, one could find the requisite overt acts, no dearth of reliable witnesses, and unequivocal aid and comfort to our enemies in the form of propaganda.

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> But one essential element of the crime of treason—indisputably present in the Fonda situation, but and lacking in the case of the three

Congressmen,  
and Kerry—is intent to betray the United States..

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> Only in rare cases can criminal intent be proved through direct evidence

(for example, from an admission by the defendant). Because intent is a state of mind, almost always it must be proved indirectly. In the crime of treason, the Supreme Court of the United States has consistently ruled that

the requisite element of intent can be inferred from a defendant's overt acts. In Fonda's case, a jury could have concluded from all that she said

and did that her intent was to betray (i.e., harm) the United States.

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> Not so with the Baghdad Boys. Taken at face value, their self-serving statements of how they were only trying to help, rather than complicate, the

desperate situation the United States seemingly faced, suggested a lack of

intent to betray America. They may have been stupid, grandstanders, useful

idiots, publicity hounds. They may even be part of the phenomenon that's the subject of another of our recent book (*Fake Warriors: Identifying, Exposing, and Punishing Those Who Falsify Their Military Service*; see [www.fakewarriors.com](http://www.fakewarriors.com)) because at least two of them (McDermott and Bonior) claimed they had fought in Vietnam—when the truth is that neither one ever

left the United States.

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> But, legally, they were not traitors. Our government could not have

made a

treason case stick. As contemptible as their conduct and statements were,

the Baghdad Boys were protected by the Constitution of the United States of

America.

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> So, too, is John F. Kerry.

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> Broadly, Kerry's alleged treason falls into two categories: (1) his post-Vietnam speech, conduct and associations (e.g., his fake discarding of

medals, his false and defamatory congressional testimony about alleged atrocities, his organizing of and participation in the Winter Soldier Investigation and Dewey Canyon III), and (2) his official Senate speech, conduct and voting (e.g., his repeated condemnation of the United States role in Vietnam, his handling of the POW/MIA investigation, his considerable

efforts to normalize relations with the Communist government of Vietnam).

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- > Kerry's post-Vietnam speech, conduct and associations, which occurred in the United States and which did not reach the level or gravity of Fonda's acts in Hanoi, are protected absolutely by the First Amendment. His speech, conduct and voting in the Senate are also protected by the Constitution. Accordingly, based on what Kerry did and no matter how distasteful, no grand jury or trial jury would be allowed to find that he intended, in a constitutional/criminal sense, to betray the United States—perhaps the essential element of a treason prosecution.
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- > Accordingly, the treason-criers who oppose the Kerry candidacy—as do I—would be well advised to tone down their rhetoric and stop spreading an allegation with deep historical roots, a textual constitutional embodiment, and several explanatory decisions from the Supreme Court of the United States. Let's not give Kerry an opportunity to blow down the treason straw man, and take down with it other charges against the would-be President that are defensible—and which constitute his Achilles Heel.
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- > That Fonda was indictable and convictable for treason is beyond argument. That others were—in Korea, Vietnam, Afghanistan and today—but were not so charged (see [www.ustreason.com](http://www.ustreason.com)), is also beyond argument. But Kerry is not. The Emperor may have no clothes—but it's not because he committed treason.
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- > However, that doesn't mean that he didn't help our communist enemy, and harm our country..
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- > Fox News Channel has just reported that "in his 1985 memoir about the [Vietnam] war, communist Gen. Vo Nguyen Giap wrote that if it weren't for organizations like Kerry's Vietnam Veterans Against the War, Hanoi would have surrendered to the United States." This is not the first time Vietnamese communist leaders have credited the anti-War movement in the United States with bolstering the former's determination to stay the course.
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- > In our "Aid and Comfort": Jane Fonda in North Vietnam, we wrote that "Fonda's trip to Hanoi sent a message not only to the American public, but to the North Vietnamese as well." Here is an exchange between The Wall Street Journal and Col. Bui Tin, a dedicated Communist cadre for most of his life, and one of the first officers of the North Vietnamese army to enter Saigon on the day it fell.

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> Q: Was the American antiwar movement important to Hanoi's victory?

> A: It was essential to our strategy. Support for the war from our rear [from China] was completely secure while the American rear was vulnerable. Every day our leadership would listen to world news over the radio at 9 a.m. to follow the growth of the American antiwar movement. Visits to Hanoi by people like Jane Fonda . . . gave us confidence that we should hold on in the face of battlefield reverses. We were elated when Jane Fonda . . . said at a press conference that she was ashamed of American actions in the war and that she would struggle along with us. (Emphasis added).

> Q: Did the politburo pay attention to these visits?

> A: Keenly.

> Q: Why?

> A: Those people represented the conscience of America. The conscience of America was part of its war-making capability, and we were turning that power in our favor. America lost because of its democracy; through dissent and protest it lost the ability to mobilize a will to win.

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> Bui Tin was wrong, and he was right.

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> He was wrong that the Fondas, Haydens, Spocks, Zinns, Lanes, Clarks—and the John Kerrys—"represented the conscience of America." To the contrary, they and their protests—the Fonda/Kerry Winter Soldier Investigation, the Dewey Canyon III protest, among others—represented the unpatriotic dark corner of American society. Their lies about our conduct of the war knew no bounds, their hatred of our country no limits.

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> But Bui Tin was correct that opposition to the war—with John Kerry, who would be President and Commander-in-Chief, in the vanguard—sapped our strength and greatly contributed not only abstractly to "America's loss," but concretely to the loss of some 58,000 American lives, countless more psychologically and physically wounded, and literally millions of Southeast Asians murdered.

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> While candidate Kerry is not guilty of constitutional/criminal treason, he is guilty of undermining our war effort and his opposition, in turn, caused Americans (and others) to die. As novelist Nelson DeMille said in endorsing "Aid and Comfort": Jane Fonda in North Vietnam: "As a combat infantry officer in Vietnam, I can attest to the fact that Jane Fonda, and people

like her, succeeded very well in lowering troop morale, and as any combat vet will tell you, low morale leads to lowered effectiveness, and that leads to battlefield deaths." (Emphasis added).

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> Bui Tin's "those people" and "people like Jane Fonda," and Nelson DeMille'

s "people like her," is simply another way of referring to John Kerry.

And

when the full truth reaches the American people about how Kerry and his cronies' anti-War activities harmed not only American interests, but also gravely injured his countrymen, Kerry should be roundly repudiated and decisively defeated in his quest for the presidency—not because he committed

treason, but because he is morally unfit to lead this country, let alone troops.