

CQ Researcher

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Presidential Power

Is Bush overstepping his executive authority?

President Bush has been busy defending the administration's electronic-surveillance program against critics who say it unconstitutionally violates citizens' civil liberties. Bush says the surveillance is vital to the nation's anti-terrorism efforts, but critics say the president has overstepped his powers and infringed on Congress' constitutional authority, inviting opposition at home and criticism abroad. Other questions about the president's possible abuse of presidential power involve the administration's use of military tribunals and its alleged use of torture, as well as its refusal to support a congressional inquiry into the response to Hurricane Katrina. What's needed, critics say, is Supreme Court action limiting the administration's exercise of executive power. But administration supporters reject claims that Bush has gone further than previous wartime presidents and stress that as commander in chief he has the power to do everything he deems necessary to protect the country.



President Bush speaks to the press at the National Security Agency in early January after discussing his controversial electronic-surveillance program with personnel at the top-secret agency.

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Cover: President Bush speaks to the press at the National Security Agency, in Fort Meade, Md., in early January after discussing his controversial electronic-surveillance-program with personnel at the top-secret agency. (Getty Images/Paul J. Richards)

Presidential Power

BY KENNETH JOST

THE ISSUES

The impressive resume of Rep. Heather Wilson of New Mexico notes her service as an Air Force officer and National Security Council aide, not to mention the doctorate she holds in international relations. Those credentials propelled her into a lead role in shaping House Republicans' messages after the Sept. 11, 2001, terrorist attacks and during the Iraq war. President Bush repaid Wilson for supporting the administration's policies with a campaign visit in October 2002 to boost her hard-fought bid for re-election to a third term.

Wilson found herself questioning the president's policies, however, after *The New York Times* reported in December 2005 that Bush had secretly authorized a program for intercepting telephone calls and e-mail traffic between suspected members of the al Qaeda terrorist network overseas and people within the United States. *The Times*' story said the surveillance program — carried out by the super-secret National Security Agency (NSA) — appeared to violate the 1978 Foreign Intelligence Surveillance Act (FISA), which requires judicial approval for any domestic wiretapping. *

* The surveillance program is widely described as "domestic spying." Administration officials say the phrase is misleading because the program targets communications between someone outside the United States who is suspected of being a member or agent of al Qaeda or an affiliated terrorist organization and someone in the United States. They prefer to call it the "terrorist surveillance program."



Department of Defense/Seaman David P. Coleman, U.S. Navy

Critics say the use of military tribunals for detainees at the U.S. Naval Station at Guantánamo Bay, Cuba, reflects President Bush's alleged abuse of presidential power, as do the administration's alleged torture of prisoners and its electronic-surveillance program.

Wilson was reportedly concerned enough to share her doubts with Rep. Jane Harman, a California Democrat who serves with her on the House Intelligence Committee. With the administration continuing to defend the program, Wilson went public with her doubts on Feb. 7, telling *The Times* she had "serious concerns" about the program and calling for the Intelligence Committee to conduct a "painstaking" review. ¹

Wilson's break exemplified growing GOP skepticism over Bush's claim that he has the power to institute the surveillance program with or without congressional authorization. "You think you're right," Senate Judiciary Committee Chairman Arlen Specter, R-Pa., told Attorney General Alberto Gonzales

during a daylong hearing on Feb. 6, "but a lot of people think you're wrong."

The rumblings of discontent finally got the administration to move away from what critics called its high-handed dealings with Congress over the program. Bush and other officials had been insisting the administration had adequately consulted Congress by holding briefings on the program for the so-called Gang of Eight — the bipartisan leaders of Congress and the chairmen and ranking Democrats on the House and Senate Intelligence committees. Broader disclosure would have risked leaks, Vice President Dick Cheney said on Feb. 7. ²

After Wilson's statements, however, the administration agreed to give detailed briefings to all Intelligence committee members.

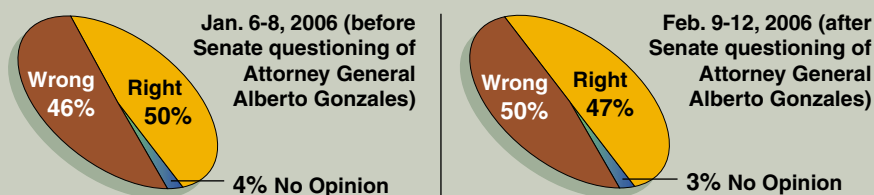
The surveillance controversy epitomizes what many observers say has been Bush's extraordinarily expansive view of presidential power. "Bush has been more assertive of presidential prerogatives than any president in American history," says Michael A. Genovese, a professor of political science at Loyola Marymount University in Los Angeles and author of an historical overview of presidents from Washington through Clinton. "It's the imperial presidency on steroids." ³

Democrats have pounced on the surveillance program to buttress criticism of Bush for bypassing Congress on anti-terrorism policies and a range of other issues. Sen. Patrick J. Leahy, D-Vt., ranking Democrat on the Judiciary Committee, calls Bush "a president prone to unilateralism." Bush is drawing criticism from a variety of interest groups as well.

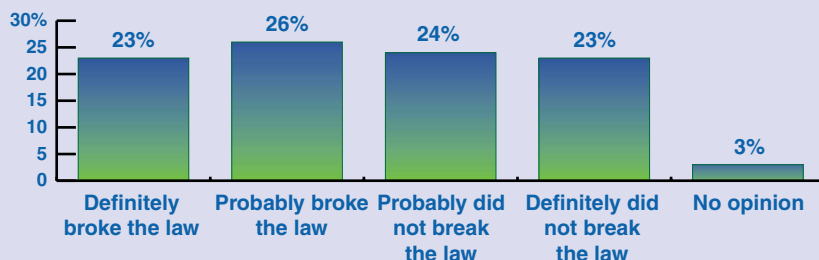
Americans Split Over Warrantless Wiretapping

Polls indicate Americans are closely divided on the wisdom and the legality of the program of warrantless electronic surveillance that President Bush authorized after the 9/11 terrorist attacks. The most recent poll — taken after Attorney General Alberto Gonzales' Feb. 6 appearance before the Senate Judiciary Committee — found a bare majority of those responding opposed to the program. An earlier poll by the same news organizations showed a bare majority in favor.

Do you think the Bush administration was right or wrong in wiretapping these conversations without obtaining a court order?



Do you think George W. Bush — definitely broke the law, probably broke the law, probably did not break the law or definitely did not break the law when he authorized wiretapping of American citizens' communications?



Source: CNN/USA Today/Gallup Polls; results are based on telephone interviews with 1,000 U.S. adults, ages 18 and older.

“The president has advanced sweeping powers as commander in chief that I find totally unconvincing and troublesome,” says Timothy Lynch, director of the criminal-justice project at the libertarian Cato Institute. “I do believe that he has overstepped the bounds of his office in a number of instances.”

“The current surveillance of Americans is a chilling assertion of presidential power that has not been seen since the days of Richard Nixon,”

says Anthony Romero, executive director of the American Civil Liberties Union (ACLU). President Nixon’s claim of authority to conduct warrantless domestic wiretapping was soundly rejected by the U.S. Supreme Court in a landmark 1972 decision, Romero noted at a Jan. 17 news conference.⁴ Romero spoke as he announced the ACLU had filed suit in federal court in Michigan challenging the legality of Bush’s surveillance program.

Administration critics cite other evidence of Bush’s expansive post-9/11 view of presidential power. They note that he invoked the president’s authority as commander in chief — established in Article II of the Constitution — to designate foreigners and U.S. citizens as “enemy combatants” and detain them for years without charging them with a crime and with only limited opportunities to challenge their confinements. The Supreme Court dealt the administration a temporary setback in June 2004, later negated by Congress, by requiring hearings or some form of judicial review for the detainees.

Bush also came under sharp criticism for a memo written by a Justice Department lawyer in August 2002 that argued the president could authorize torture in interrogating suspected terrorists. The White House disavowed the memo after it was disclosed in June 2004. Despite evidence of abuse of Iraqi prisoners and others, Bush and other officials contend that U.S. policy prohibits torture or any other cruel, degrading or inhumane treatment of detainees.⁵

Administration supporters reject claims that Bush has gone further than previous wartime presidents. “Earlier presidents asserted much more sweeping authority in the name of the president’s power as commander in chief,” says Kris Kobach, a professor at the University of Missouri School of Law in Kansas City and former counselor to Bush’s first attorney general, John Ashcroft. Kobach cites Franklin D. Roosevelt’s wiretapping during World War II and Harry S. Truman’s seizure of the nation’s steel mills during the Korean War — a move struck down by the Supreme Court as beyond the president’s powers. “President Bush’s actions appear minor by comparison,” Kobach says. (See sidebar, p. 184.)

But presidential scholar Richard Pious, chairman of the Department of Political Science at Barnard College

in New York City, says that even if Bush has followed other presidents in claiming broad powers during wartime, he has been “one of the most overbearing” of presidents in his relations with Congress, critics and subordinates. “There’s a deft way [of using power], and then there’s the Bush way,” Pious says. “He’s been a bull in a china shop.”

Bush entered the White House in 2001 convinced that the presidency had been weakened since Nixon was forced to resign in August 1974, following the Watergate scandal. That view is held at least as strongly by Cheney, who was chief of staff to Nixon’s successor, Gerald R. Ford.⁶

With the controversy over electronic surveillance at a peak in mid-December, Cheney stoutly defended the administration’s record in trying to restore presidential power. “I believe in a strong, robust executive authority, and I think that the world we live in demands it,” Cheney told reporters traveling with him on Air Force Two on Dec. 20. In wartime, he added, the president “needs to have his constitutional authority unimpaired.”⁷

Bush voiced similar views on Feb. 10. “Sept. 11 changed the way I think,” Bush told GOP House lawmakers during a retreat in Cambridge, Md. “I told the people exactly what I felt at the time, and I still feel it, and that is we must do everything in our power to protect the country.”⁸

Critics, however, say Bush’s broad view of presidential powers is inviting opposition at home and criticism abroad. “When you disembodify the president from the rule of law, you change the very structure of government,” says Genovese. “You want to empower the Congress and the president to fight terror, but you don’t want to give them the store.”

As the debate over presidential power in the post-9/11 world continues, here are some of the questions being considered:

Has President Bush overstepped his authority in the war against terrorism?

When reports surfaced in late April 2004 that U.S. servicemembers had mistreated Iraqi captives in Baghdad, President Bush quickly denounced the abuse.⁹ But his comments were clouded by disclosures in June of memoranda by government lawyers suggesting the president could authorize torture even in the face of a congressional statute and international treaties prohibiting such practices.

“Congress may no more regulate the president’s ability to detain and interrogate enemy combatants than it may regulate his ability to direct troop movements on the battlefield,” a ranking Justice Department official wrote.¹⁰

Over the next 18 months, an indignant Sen. John McCain, R-Ariz., who was tortured as a prisoner of war during the Vietnam conflict, led an ultimately successful effort in Congress to write into law a specific prohibition of torture or any “cruel, inhuman or degrading” treatment of prisoners at the hands of U.S. servicemembers. Although Bush signed the measure on Dec. 30, 2005, he included a “signing statement” that suggested he was not bound by it. “The executive branch shall construe [the law] in a manner consistent with the constitutional authority of the president to supervise the unitary executive branch and as commander in chief,” the statement read.¹¹ *

Throughout the controversy, administration officials have depicted the dispute as largely theoretical, saying that Bush has restated official U.S. policy against the use of torture. And one ad-

* The unitary executive theory holds that under the Constitution Congress cannot limit the president’s authority to control executive branch officials. Some proponents of the theory say it also gives the president powers unspecified in Article II. The Supreme Court has rejected the theory.

ministration supporter suggests that Bush’s signing statement carries little weight. “Signing statements have only the effect that the courts choose to give them — which is minimal in almost all cases,” says the University of Missouri’s Kobach.

Still, Bush’s decision to risk further public and congressional criticism on the detainee-treatment issue continues his policy of claiming broad presidential powers and resisting efforts to limit the scope of his authority. Bush adopted a similar posture in defending the electronic-surveillance program after it was disclosed in December. In a radio address the next day, Bush said he instituted the program under his authority as commander in chief and intended to continue it despite criticism.

“The American people expect me to do everything in my power under our laws and Constitution to protect them and their civil liberties,” Bush said. “And that is exactly what I will continue to do, so long as I’m the president of the United States.”¹²

Critics contend that Bush has gone beyond his lawful powers and violated both congressional laws and the Constitution not only with his electronic-surveillance program but also with other policies as well. The accusations of presidential lawbreaking received high-profile attention in January from the man who lost the presidency to Bush in 2000: former Vice President Al Gore. Gore charged Bush with “breaking the law repeatedly and insistently,” citing the electronic-surveillance program as the latest example.

“If the president has the inherent authority to eavesdrop, imprison citizens on his own declaration, kidnap foreign citizens off the streets of other countries and torture, then what can’t he do?” Gore asked in a major speech in Washington on Jan. 16 cosponsored by the liberal American Constitution Society and the conservative-libertarian Liberty Coalition. He added: “A president who breaks the law is a threat to the very structure of our government.”

A Republican Party spokeswoman denigrated Gore's speech as politically motivated. "Gore's incessant need to insert himself in the headline of the day is almost as glaring as his lack of understanding of the threats facing America," Republican National Committee spokeswoman Tracey Schmitt said in a statement. "While the president works to protect Americans from terrorists, Democrats deliver no solutions of their own, only diatribes laden with inaccuracies and anger."

With the electronic-surveillance debate continuing, administration officials are defending the practice on statutory grounds and as within the president's inherent powers as commander in chief. In legal memoranda and in Gonzales' testimony before the Senate Judiciary Committee, the Justice Department claims that the Sept. 14, 2001, congressional resolution authorizing the use of military force against al Qaeda or other terrorist organizations gives the president power to conduct warrantless electronic surveillance against the enemy both outside and within the United States.

Administration supporters echo that argument while continuing to defend the surveillance program as a natural part of the president's war-making powers. "It would be remarkable if our president was not attempting to use all the forces available to him to intercept the enemy's communications," says Todd Gaziano, director of legal and judicial studies at the conservative Heritage Foundation in Washington. "When we're at war, all of our

enemy communications should be intercepted if at all possible."

Critics say the administration is wrong on both points. The argument that the 2001 use-of-force resolution supersedes the specific prohibition against domestic warrantless wiretapping is "laugh-



Rep. Heather Wilson, R-N.M., has questioned the president's program for intercepting telephone calls and e-mail traffic between suspected terrorists overseas and people within the United States.

able," says Geoffrey Stone, a law professor at the University of Chicago and author of a book on civil liberties in wartime. In a similar vein, Stone says intelligence gathering is "not sufficiently connected" to the use of force to be encompassed within the president's commander-in-chief powers.

Polls show the public closely divided on the issues. The *Los Angeles Times* and Bloomberg News in late January found a narrow plurality of respondents — 49 percent to 45 percent — supporting the program. A later poll by CNN-USA *Today*-Gallup — taken in February after Gonzales'

appearance — found a bare majority opposed to the program: 50 percent to 47 percent. In a second question, 49 percent of those responding thought Bush may have violated the law in authorizing the program while 47 percent believed he had not.¹³

Has President Bush infringed on Congress' constitutional powers?

After 14 coal miners died in two separate accidents in West Virginia in January, the Senate Labor Appropriations Subcommittee called in the head of the Mine Safety and Health Administration (MSHA) to ask what the agency was doing to prevent future tragedies. Acting Administrator David Dye spent an hour on the witness stand on Jan. 23 telling the senators that there was more safety enforcement than ever before.

Once the questions were over, Dye started to leave, saying that he could not stay to answer follow-ups after testimony from other witnesses. "There's 15,000 mines in the United States, and we've got some really pressing matters," Dye said.

With dripping sarcasm, subcommittee Chairman Specter told Dye that the senators also had "other pressing matters" — pointing to the planned hearings on the NSA surveillance program as one example. "So we don't think we're imposing too much to keep you here for another hour," Specter said. Undeterred, Dye departed, leaving aides behind to field any other questions.

As slights go, it was a small one — but nonetheless indicative of what many observers see as the Bush administration's disdain for Congress as a supposedly coequal branch of government. "Bush has been more successful than

Office of Rep. Heather Wilson

any president I've seen in asserting presidential powers and in giving Congress the back of his hand," says Norman Ornstein, a resident scholar at the American Enterprise Institute and a Congress-watcher for more than 40 years.

Among other examples, the White House in January refused a request by a Senate committee investigating the government's response to Hurricane Katrina for presidential aides' e-mail correspondence on the subject. Earlier, the administration had turned aside efforts by Senate Democrats during confirmation hearings for Supreme Court nominees John G. Roberts Jr. and Samuel A. Alito Jr. to obtain documents from their time as Justice Department lawyers in the 1980s.

The debate over the electronic-surveillance program pitted the president against Congress in a higher-stakes confrontation. From *The Times'* initial disclosure on Dec. 16, lawmakers in both parties faulted the administration for giving Congress too little information about the program. Five members of the Senate Intelligence Committee — including Republicans Chuck Hagel of Nebraska and Olympia Snowe of Maine — signed a letter on Dec. 20 calling for the panel to conduct "an immediate inquiry" into the program.

Democrats were especially critical of the administration's failure to brief the full membership of the two Intelligence committees about the program. They gained support for their critique in January from the Congressional Research Service (CRS), which said the limited briefings to House and Senate leaders violated a broad disclosure requirement contained in a 1991 law.

The law, an amendment to the National Security Act passed as part of the 1991 intelligence authorization measure, required that the two congressional Intelligence committees be kept "fully and currently informed" of U.S. "intelligence activities." Limited disclosures to the so-called Gang of Eight were allowed only for "covert operations."¹⁴

The administration's belated decision in February to provide more detailed briefings to both Intelligence committees may have mooted the disclosure issue. Earlier, however, CRS lawyers also voiced strong doubts about the program's legal basis. In a 44-page memorandum, attorneys Elizabeth Bazan and Jennifer Elsea concluded that courts had previously upheld Congress' power to regulate intelligence gathering and were "unlikely" to find that Congress had expressly or implicitly authorized the program.

Nevertheless, during his Judiciary Committee appearance Attorney General Gonzales rejected suggestions by senators in both parties for steps to strengthen the legal basis for the program. Specter suggested the administration present the program to the Foreign Intelligence Surveillance Court — the special court created to consider applications for warrants under FISA. Several other senators seemed almost to plead with Gonzales to join in supporting legislation to authorize the program. Gonzales said the administration would listen to ideas from Congress, but made no promises.

The stirrings of resistance from within GOP ranks to Bush's position represent a departure from the mostly unified and nearly unquestioning support that Hill Republicans gave to the White House during Bush's first term. "Clearly, the executive branch is doing whatever it can to maximize its influence. That's as natural as it can be," says Marc Hetherington, an associate professor of political science at Vanderbilt University in Nashville. "What strikes me as interesting is how little Congress has done to stop it."

Ornstein agrees. The reason, he says, is that from the start of his administration, congressional Republicans have seen their fate as "inextricably linked" to Bush's. "They saw themselves as field soldiers much more than they saw them-

selves as an independent, distinct branch of government," Ornstein explains. "They saw oversight as something that could embarrass the president — and therefore did little to nothing."

The rumblings of independence within GOP ranks, however, may remind Bush of the risks of being too high-handed with Congress. "Maybe it's shortsighted to be so blunt with the legislative branch," says John Marini, an associate professor of political science at the University of Nevada-Reno and a critic of what he called "the imperial Congress" that was under Democratic control during the Reagan presidency in the 1980s.

"The legislative branch has more power than any of the other branches," Marini says. "Congress has the power to slap the president down at any time. The bulk of the power is in the legislature if it's willing to use it."

Should the courts limit the Bush administration's claims of executive power?

Just after launching the war in Afghanistan, President Bush issued an executive order on Nov. 13, 2001, allowing establishment of so-called "military commissions" to try suspected terrorists captured there or elsewhere. Critics questioned the legal basis for the order, but Bush pointed to Congress' Sept. 14 use-of-force resolution as giving him the authority needed to set up the tribunals.

After several years of legal skirmishes, the Supreme Court agreed in November 2005 to hear a challenge to Bush's order brought by Salim Ahmed Hamdan, a one-time driver for al Qaeda leader Osama bin Laden and a detainee at Guantánamo since 2002. But now the Bush administration wants the court to dismiss Hamdan's case, saying that Congress in December eliminated the federal courts' power to hear challenges by Guantánamo detainees except after final decisions in their cases by the military tribunals.

How Bush Defends ‘Roving Wiretaps’

In April 2004, during the presidential campaign, President Bush was drumming up support for the USA Patriot Act before a law-enforcement group in Buffalo, N.Y.

Bush acknowledged controversy over the anti-terrorism law’s controversial “roving wiretaps,” which allow government investigators to listen in on conversations as targets move from one cell phone to another.

But Bush promised the law did not affect constitutional safeguards: “Now, by the way, any time you hear the United States government talking about wiretap, it requires — a wiretap requires a court order. Nothing has changed, by the way. When we’re talking about chasing down terrorists, we’re talking about getting a court order before we do so.”¹

Bush failed to mention, however, that in 2001, just as Congress was shaping the Patriot Act, he had secretly authorized a program of warrantless eavesdropping on telephone calls and e-mail traffic between people in the United States and members or supporters of the terrorist group al Qaeda overseas. Bush had approved the surveillance by the super-secret National Security Agency after receiving assurances from Justice Department lawyers that the program was legal despite provisions in the Foreign Intelligence Surveillance Act (FISA) requiring a warrant for any domestic wiretaps.

Information about the surveillance program emerged only in December 2005, after *The New York Times* blazoned it across the front page. The revelation provoked a debate on Capitol Hill and around the country not only about the program but also about the president’s legality in authorizing it. *The Times* said it had withheld the story for nearly a year at the administration’s request, for national security reasons.²

The White House quickly moved to defend the program. Bush refused to confirm the existence of the program in a previously scheduled interview on Dec. 16 on PBS’ “NewsHour with Jim Lehrer.” The next day, however, Bush acknowledged the program, insisting it was “consistent with U.S. law and the Constitution.”³

While continuing to shield most details of the program, Bush and other administration officials — notably, Vice President Dick Cheney and Attorney General Alberto Gonzales — are unswervingly defending it. The legal defense — detailed in a 42-page Justice Department memorandum — rests on both the president’s inherent constitutional powers as commander in chief and on the Authorization to Use Military Force approved by Congress three days after the 9/11 terrorist attacks.⁴

Intelligence gathering directed against an enemy is one of the “traditional and accepted incidents of force,” the memo argues. On that basis, the president as commander in chief has inherent power to use any intelligence methods — including wiretaps, which Presidents Woodrow Wilson and Franklin D.

Roosevelt both authorized during the 20th century’s two world wars. The use-of-force resolution “confirms and supplements” that power, the memo contends.

As for FISA, the Justice Department memo notes the act prohibits warrantless wiretaps unless authorized by a separate statute. It goes on to contend that the use-of-force resolution provides that separate authorization. Even without that argument, the memo says, FISA should be interpreted narrowly to avoid a constitutional clash with the president’s powers as commander in chief.

Most of the legal scholars and experts weighing in on the issue — representing a range of ideological viewpoints — reject the administration’s ultimate conclusion, as does the nonpartisan Congressional Research Service.⁵ Two main points seem to command wide agreement among the critics:

- That the 1978 FISA law validly limits whatever inherent power the president may have exercised in the past to gather intelligence on the enemy;
- That Congress’ broadly phrased authorization to use “all necessary and appropriate force” against those responsible for the 9/11 attacks cannot be read to permit warrantless wiretapping within the United States in violation of FISA.

In defending the administration’s position, Gonzales ran into a buzz saw of criticism from Democrats and some Republicans in a daylong appearance before the Senate Judiciary Committee on Feb. 6. The committee is now planning a second daylong hearing with supporters and opponents of the program.

Meanwhile, the administration is sending signals that it might agree to legislation on the issue, which — if passed — could eliminate some, though not all, of the legal arguments against the program.

¹ For the full text of Bush’s remarks, see *Weekly Compilation of Presidential Documents*, April 26, 2004, pp. 638-645 (www.gpoaccess.gov/wcomp/). For coverage, see Steve Orr, “Bush Makes Case for Anti-Terror Act,” *Rochester Democrat and Chronicle*, April 21, 2004, p. A1; Dan Herbeck, “Freedom vs. Security at Issue,” *Buffalo News*, April 21, 2004, p. A1.

² See James Risen and Eric Lichtblau, “Bush Lets U.S. Spy on Callers Without Courts,” *The New York Times*, Dec. 16, 2005, p. A1. See also James Risen, *State of War: The Secret History of the CIA and the Bush Administration* (2006), pp. 39-60.

³ For the text of the Dec. 17 address, see *Weekly Compilation of Presidential Documents*, Dec. 26, 2005, pp. 1880-1882. Bush was also questioned at length about the program in a news conference on Dec. 19. *Ibid.*, pp. 1885-1896.

⁴ U.S. Department of Justice, “Legal Authorities Supporting the Activities of the National Security Agency Described by the President,” Jan. 19, 2006 (www.usdoj.gov/opa/whitepaperonnsalegalauthorities.pdf).

⁵ See Congressional Research Service, “Presidential Authority to Conduct Warrantless Electronic Surveillance to Gather Foreign Intelligence Information,” Jan. 5, 2006; critical commentary can be found in op-ed articles in many newspapers, on the Web site www.findlaw.com, and on various interest group Web sites, including the American Civil Liberties Union’s (www.aclu.org/nsaspying).

McCain’s anti-torture legislation that cleared Congress in December included a provision — the so-called

Graham-Levin amendment — barring Guantánamo detainees from challenging their detentions in federal court.

Instead, it provided for limited review of the tribunals’ final decisions by the D.C. Circuit.

“Congress made clear that the federal courts no longer have jurisdiction over actions filed on behalf of Guantánamo detainees,” the government argues in a motion filed with the high court in Hamdan’s case on Jan. 12. The government filed a similar motion urging the U.S. Court of Appeals for the District of Columbia to throw out two pending cases brought on behalf of about 60 other Guantánamo detainees.¹⁵

Hamdan’s lawyer, Georgetown University Law Center Professor Neal Katyal, argues that Bush’s order creating the tribunals established “a new form of military jurisdiction” without congressional authority and in violation of the Geneva Conventions. Dismissing the case, he writes in response to the government motion, would mean that most broad challenges to the tribunals “could never be brought at all.”

Administration supporters, in fact, want to limit any review of the detainees’ cases. “The idea that the military ought to be spending its time going through case by case presenting detailed evidence is ridiculous,” says Richard Samp, senior attorney at the conservative Washington Legal Foundation, who has filed briefs supporting the government in the Supreme Court and D.C. Circuit cases.

Lawyers for the detainees counter that many of them are in fact innocent of any terrorism charge and that, in any event, they deserve a fair hearing. “The idea of justice is not to let people go. It is to let these people have a hearing,” says Bill Goodman, legal director for the New York-based Center for Constitutional Rights, which brought the major detainee cases.

The cases have given Bush’s critics their best opportunity so far to test the president’s powers in court. The Supreme Court in June 2004 rejected the administration’s broad efforts to deny or severely limit suspected terrorists’ ability to challenge their detentions in court. In one decision, *Hamdi v. Rumsfeld*, the court upheld the president’s authority

to detain U.S. citizens as enemy combatants but required that they be given “a meaningful opportunity to contest the factual basis for the detention before a neutral decisionmaker.” In a second ruling, *Rasul v. Bush*, the court held that federal courts have jurisdiction over habeas corpus challenges filed by aliens held at Guantánamo.¹⁶

The administration moved to minimize the impact of the rulings. In the citizen enemy-combatant case, the government released Yaser Hamdi in October 2004 on the condition that he renounce his U.S. citizenship and relocate to Saudi Arabia, where he held dual citizenship. Later, the government transferred a second U.S. citizen held as an enemy combatant, Jose Padilla, from a naval brig to a federal jail in January 2006 after obtaining an indictment against him for aiding terrorist activity abroad. Padilla is now awaiting trial in Miami while asking the high court to rule his previous three-year detention without charges unlawful.¹⁷

Meanwhile, the Defense Department is devising rules for Combatant Status Review Tribunals to be held for detainees at Guantánamo, but the rules in some ways limit detainees’ procedural rights. At the same time, the government wants the federal courts in Washington — where the Guantánamo cases all have been consolidated — either to postpone action or to rule in favor of the legality of the tribunals and their procedures.

The D.C. Circuit handed the administration a major victory on July 15, 2005, by upholding the president’s power under the use-of-force resolution to create the tribunals and rejecting other challenges to their procedures. Congress appeared to buttress the administration’s stance with the Graham-Levin amendment. However, the amendment sponsors differ on whether it applies to the pending cases. Republican Lindsey Graham of South Carolina says it does, while Democrat

Carl Levin of Michigan says it does not. The issue turns partly on a close reading of a somewhat complex statute. But Hamdan’s lawyers argue that applying the law retroactively would amount to “the extraordinary step of stripping the federal courts — and [the Supreme Court] in particular — of jurisdiction over seminal pending cases.”

Congress intended that exact result, Samp says. “Now that Congress has told the courts that they shouldn’t get involved, I hope the courts will finally take the hint,” he says. In response, Goodman contends that the law amounts to an unconstitutional suspension of habeas corpus and — even if valid — applies only to future cases, not those already pending. ■

BACKGROUND

‘The Executive Power’

The framers of the Constitution provided in Article II that “the executive power” of the new national government “shall be vested in a President of the United States of America.” Some of the president’s powers were specified, but the list was not as long or as inclusive as the “enumerated” powers of Congress in Article I.

The meaning of the text and the intention of the framers have been debated through history up to the present day. Over time, the presidency has gained power. But each president has had to establish his own power anew in the face of opposition or resistance from other power centers: Congress, the courts, the federal bureaucracy and public opinion.¹⁸

The Constitutional Convention met in 1787 with a consensus that the new government needed a stronger executive than was provided in the

Articles of Confederation. Nevertheless, Article II is the “poorest drafted” part of the Constitution, according to historian Forrest McDonald, an emeritus professor at the University of Alabama. Delegates turned to laying out the president’s powers only after devising the Electoral College system for the election of the president and rejecting the strong minority viewpoint for a “plural” chief executive. With time running out, the framers left the president’s powers “ambiguous and undecided,” McDonald says. For example, the article divides the power of appointment between the Senate and the president but says nothing about removing an officer. (Alexander Hamilton, who supported a strong chief executive, nonetheless believed the Senate had to consent.) Still, two provisions in particular point toward a strong executive: the designation of the president as commander in chief and the broad duty to “take care that the laws be faithfully executed.”

Despite its ambiguities, Article II gave the president opportunities to act if he took them. George Washington (1789-1797) did. He established the precedents of firing Cabinet officers, vetoing legislation on constitutional grounds and controlling foreign policy. Among pre-Civil War presidents, several others stretched the office’s powers beyond Article II’s stated terms. Despite doubts about his own authority, Thomas Jefferson (1801-1809) completed the Louisiana Purchase unilaterally, choosing speed over constitutional niceties.

More boldly, Andrew Jackson (1829-1837) declared the president — not Congress — to be “the direct representative” of the American people. He successively defied the Supreme Court (by refusing to help enforce a controversial decision), Congress (by vetoing renewal of the national bank) and the Southern states (by rejecting their power to nullify acts of Congress). James K.

Polk (1845-1849) followed his mentor Jackson’s example by stretching the president’s power — most notably, by provoking the war with Mexico that expanded the country’s borders to the Pacific.

In his effort to save the Union, Abraham Lincoln (1861-1865) construed the president’s power more broadly than anyone before or perhaps since, according to political scientist Genovese. Newly inaugurated and with Congress not in session, Lincoln responded to the Southern states’ secession and the firing on Fort Sumter by commencing military action, calling for new troops, declaring a blockade of Southern ports and suspending habeas corpus. He acted unilaterally again in issuing the Emancipation Proclamation. But McDonald says Lincoln also allowed Congress to help direct military operations and sought after-the-fact legislative support for his decision to free the slaves. And despite Chief Justice Roger Taney’s ruling to the contrary, Lincoln always believed he had followed the law in suspending habeas corpus.

The strong presidents had their critics. Jackson’s opponents labeled him “King Andrew,” Lincoln’s called him a “dictator.”

Through the 19th century, however, Congress was far and away more powerful than the president. Presidents only sparingly proposed legislation. They tangled with Congress over spending and with the Senate over appointments. Among post-Civil War presidents, only Grover Cleveland (1885-1889, 1893-1897) stood up to Congress — and he only with the negative power of the veto. As the young scholar Woodrow Wilson wrote in 1885, Congress was “unquestionably the predominant and controlling force” in national affairs.¹⁹

Imperial Presidency?

The president’s power increased in the 20th century as the national

government itself grew more powerful, playing a larger role in domestic social and economic policies and acting more assertively in world affairs. Presidents assumed a major role in initiating legislation for Congress to consider and became figures of international importance as the United States emerged as the world’s strongest nation, both economically and militarily. Yet even successful presidents stumbled by considering their powers more sweeping than they actually were. And the growth of presidential power halted with the backlash in the late 1960s and early ’70s against what historian Arthur Schlesinger Jr. lastingly labeled “the imperial presidency.”²⁰

The modern presidency began taking shape under William McKinley (1897-1901), who used his experience as a former senator to gather legislative power into the White House and led the United States into its first overseas conflict: the Spanish-American War. After McKinley’s assassination, Theodore Roosevelt (1901-1909) moved more boldly at home and abroad, presenting an ambitious domestic legislative agenda and a determination — in political scientist Genovese’s phrasing — to “dominate” the world stage. Most significantly, Roosevelt personalized the presidency as never before. He viewed himself as “the steward of the people” and his office as a “bully pulpit” from which he could shape public opinion.

Wilson (1913-1921) likewise became — in McDonald’s words — the nation’s “chief legislator” at home and a commanding figure abroad. But his presidency ended with the Senate’s rejection of the Versailles Treaty, due in part to Wilson’s refusal to compromise with opponents.

Franklin D. Roosevelt (1933-1945) combined all these strands, according to McDonald: chief legislator, national symbol, world leader — and man on a white horse. Elected with a mandate to lift the nation out of the Great

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Chronology

Before 1900

Congress is generally the dominant branch of the government.

20th Century

Presidents become more powerful with advent of modern communications and U.S. emergence as world power.

1933-1945

Franklin D. Roosevelt takes office with mandate to lift U.S. out of Great Depression; Congress passes his “New Deal” economic-recovery program but rebuffs his 1937 effort to “pack” Supreme Court.

1951

States ratify 22nd Amendment, limiting future presidents to two terms.

1952

Supreme Court says President Harry S Truman exceeded his authority in seizing steel mills during Korean War.

1963

After assassination of President John F. Kennedy, Lyndon B. Johnson wins passage of ambitious agenda.

1972

Supreme Court says President Richard M. Nixon cannot order warrantless wiretapping in domestic-security cases.

1973

War Powers Act requires Congress’ approval before U.S. forces are sent into combat.

1974

Congressional Budget and Impoundment Control Act limits president’s authority to withhold spending approved by Congress. . . . Supreme

Court orders Nixon to turn over tapes of Watergate-related conversations; evidence of Nixon’s role in cover-up forces him to resign.

1978

Foreign Intelligence Surveillance Act (FISA) requires judicial warrant from special court for foreign-intelligence gathering inside U.S. . . . Congress requires appointment of independent counsel to investigate alleged wrongdoing by president.

1980s **Ronald Reagan becomes first two-term president since Eisenhower.**

1986-1987

Iran-contra scandal weakens Reagan.

1990s **Bill Clinton is first Democratic president to serve two full terms since FDR.**

1990

Congress approves President George H. W. Bush’s request that U.S. lead U.N. coalition in Persian Gulf War against Iraq.

1997

Supreme Court rules a president can be sued for unofficial actions.

1998

Clinton’s sexual liaison with White House intern is revealed; House in December impeaches Clinton for perjury and obstruction; after Senate trial, Clinton is acquitted in February 1999.

1999

Congress allows independent-counsel act to expire.

2000-Present

President Bush moves to strengthen executive powers.

2001

President George W. Bush quickly moves to reassert executive prerogatives; after 9/11 terrorist attacks Congress passes Authorization to Use Military Force resolution aimed at al Qaeda, the group blamed for attacks, and USA Patriot Act. . . . Bush creates military tribunals to try enemy combatants captured in Afghanistan.

2002

At Bush’s request, Congress authorizes U.S. invasion of Iraq. . . . Justice Department memo claims president has power to authorize torture of detainees; memo is disavowed when disclosed in 2004.

2004

Supreme Court backs president’s authority to hold “enemy combatant” but says U.S. citizens must be given hearing, and aliens can use habeas corpus to challenge detention. . . . Bush re-elected.

2005

Bush is said to have authorized secret electronic surveillance of phone calls, e-mails between suspected terrorists overseas and persons in the U.S.; Bush, others defend program, despite criticism that it is illegal. . . . Detainee Treatment Act bars torture or abusive treatment of detainees, limits legal challenges to confinement.

2006

White House signals open mind on possible legislation to authorize warrantless surveillance program. . . . Supreme Court due to hear challenge to military tribunals.

New Anti-Torture Law Questioned

Reports that the CIA secretly imprisons foreigners in countries that might condone torture have raised questions about whether President Bush has overstepped his authority and violated international laws in his war against terrorism.

If the U.S. president can “kidnap foreign citizens off the streets of other countries and torture, then what can’t he do?” asked former Vice President Al Gore in a Jan. 16 speech outlining concerns about the expansion of executive power during the Bush presidency.¹

And experts doubt that anti-torture measures passed by Congress in December — authored by former Navy pilot and Vietnam prisoner of war Sen. John McCain, R-Ariz. — will halt the practice.

President Bush neither confirms nor denies the existence of secret CIA prisons or that the United States transfers foreign citizens to other countries to be interrogated. However, he told reporters in November that the United States is at war with an enemy “that lurks and plots and plans and wants to hurt America again. And so, you bet, we’ll aggressively pursue them, but we’ll do so under the law.” But he quickly added, “We do not torture.”²

According to the press reports, after the 9/11 terrorist attacks the CIA initiated a covert anti-terrorism program involving so-called extraordinary rendition, in which the agency helps capture suspected terrorists abroad and transfers them to third countries where they are subjected to interrogation techniques that some lawyers say violate anti-torture treaties. Rep. Edward Markey, D-Mass., condemned the practice as “an extrajudicial, secret process in which the CIA or some other U.S. government entity acts as prosecutor, judge and jury and without any due process may send a detainee to any country in the world, including some of the planet’s most notorious human-rights abusers.”³

Then in November *The Washington Post* disclosed that the CIA has been hiding and interrogating terrorist captives in secret prisons around the world, including in Eastern European democracies.⁴ After the revelations touched off an uproar both at home and in Europe, the detainees allegedly were moved to similar CIA facilities elsewhere, referred to as “black sites” in classified documents.⁵

The European Union and human-rights organizations say the practice may violate international and domestic laws, including the U.N. Convention against Torture and the European Convention on Human Rights. Forcibly detaining a person and then refusing to acknowledge the detention or allow the person legal protection is called a “forced disappearance,” says

Human Rights Watch. “The U.S. has long condemned other countries that engage in forced disappearances” and helped draft U.N. condemnations of such activities — with no exceptions for national security, the group says.⁶

The allegations about the renditions and secret prisons further damaged America’s reputation abroad, already severely tarnished by the 2004 exposé of detainee abuse in U.S. military prisons in Iraq and Afghanistan.⁷

Secretary of State Condoleezza Rice tried to assure European officials last December that the U.N. convention applies to U.S. personnel “wherever they are, whether they are in the United States or outside of the United States.”⁸

Despite the assurances, both the European Union’s Parliament and the Council of Europe — the continent’s main human-rights organization — launched separate investigations into whether the CIA may have illegally transferred prisoners through European airports. Now questions are being raised as to whether European governments may have cooperated secretly with the United States. On Feb. 20, 2006, German prosecutors announced they were investigating whether Germany acted as a silent partner in the abduction of Khaled el-Masri, a German citizen of Arab descent who was mistaken for a terrorism suspect. El-Masri says he was abducted while on vacation in Macedonia in 2003 and flown to an American prison in Afghanistan, where he was held and tortured for five months.⁹

In December, amid new outrage over allegations that the administration had approved surveillance of U.S. citizens’ telephone and e-mail communications, Congress began to push back against Bush’s controversial wartime tactics. Both chambers inserted language drafted by McCain into the 2006 Defense appropriations and authorization bills prohibiting Americans from engaging in “cruel, inhuman and degrading” treatment of prisoners anywhere in the world and restricting the U.S. military to interrogation techniques listed in the U.S. Army *Field Manual*.

“It’s an important first step, but it definitely hasn’t solved the problem,” says Joanne Mariner, director of the counterterrorism program at Human Rights Watch. Questions still remain, according to her and others, as to how it will be enforced, exactly what the Army *Field Manual* — which is being revised — will say, and who will define torture or cruel, inhuman and degrading treatment for CIA personnel.

In addition, says Mariner, it addresses only the behavior of U.S. personnel, so it will not specifically prevent the CIA from “outsourcing torture” to interrogators in other countries.

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Depression, he wrote the most ambitious legislative agenda in U.S. history — known as the New Deal — and got it enacted within 100 days. His radio “fireside chats” established

the model of personal communication between the president and the people. He led the nation and the world in defeating German Nazism in Europe and Japanese aggression in the Pacific.

But FDR also stumbled — most notably when Congress rejected his 1937 plan to “pack” the Supreme Court. And his legacy was clouded by the two-term constitutional amendment ratified six years after his death and the

Enforcement of the McCain amendment was complicated by the inclusion of another provision — written by Sens. Lindsey Graham, a South Carolina Republican, and Democrat Carl Levin of Michigan — prohibiting the 500-plus detainees at Guantánamo Bay, Cuba, from challenging their detention or treatment in a U.S. court.

“If the McCain law demonstrates to the world that the United States really opposes torture, the Graham-Levin amendment risks telling the world the opposite,” said Tom Malinowski, Washington advocacy director at Human Rights Watch. The treatment of Guantánamo Bay detainees will remain “shrouded in secrecy, placing detainees at risk for future abuse.”¹⁰

Robert K. Goldman, an American University law professor and former president of the Inter-American Commission on Human Rights, agrees the McCain amendment has great symbolic value overseas. “It helps to clean up our image, which has been so battered around the world,” he said. But Scott L. Silliman, executive director of Duke Law School’s Center on Law, Ethics and National Security, says the measure allows CIA and Justice Department lawyers to determine which interrogation techniques CIA and civilian interrogators can use.¹¹

And effective policing by those departments is unlikely, said Eugene Fidell, president of the National Institute of Military Justice. “You could have a wonderful McCain amendment, but if there’s no enforcement mechanism, it’s worthless or worse than worthless because it would be an empty promise.”¹²

Many experts agree enforcement appears doubtful. After having unsuccessfully tried to get Congress to exempt CIA operatives from McCain’s abuse ban, President Bush signed the two laws reluctantly, saying on both occasions that he would enforce the provisions “in a manner consistent with the constitutional authority of the president to supervise the unitary executive branch and as commander in chief.” Many read his statement as signaling his intention to disregard the law.¹³

But McCain and Sen. John W. Warner, R-Va., chairman of the Senate Armed Services Committee, said in a statement on Jan.



Getty Images/Paul J. Richards

German citizen Khaled el-Masri, shown on TV, says he was illegally abducted, detained and tortured last year in a secret overseas prison.

4, 2006, that they expect the president to abide by the law. “We believe the president understands Congress’s intent in passing by very large majorities legislation governing the treatment of detainees,” they said, and that Congress had specifically declined “to include a presidential waiver of the restrictions included in our legislation.” Further, they said, their committee “intends through strict oversight to monitor the administration’s implementation of the new law.”

Meanwhile, the European Parliament was scheduled to begin hearings into the secret prison allegations on Feb. 23. “The fact that Europe is investigating this and not the U.S. Congress is disappointing,” says Human Rights Watch’s Mariner.

— **Kathy Koch**

¹ The speech is available at www.acslaw.org.

² Michael A. Fletcher, “Bush Defends CIA’s Clandestine Prisons; ‘We Do Not Torture,’ President Says,” *The Washington Post*, Nov. 8, 2005, p. A15.

³ Randy Hall, “‘Outsourcing Torture’ Condemned by Dems, Activists,” CNSNews.com, March 11, 2005.

⁴ Dana Priest, “CIA Holds Terror Suspects in Secret Prisons; Debate Is Growing Within Agency About Legality and Morality of Overseas System Set Up After 9/11,” *The Washington Post*, Nov. 2, 2005, p. A1.

⁵ Dana Priest, “Covert CIA Program Withstands New Furor; Anti-Terror Effort Continues to Grow,” *The Washington Post*, Dec. 30, 2005, p. A1.

⁶ “Questions and Answers: U.S. Detainees Disappeared into Secret Prisons: Illegal under Domestic and International Law,” Human Rights Watch Backgrounder, Dec. 9, 2005, <http://hrw.org/backgrounder/usa/us1205/index.htm>.

⁷ For background, see Mary H. Cooper, “Privatizing the Military,” *CQ Researcher*, June 25, 2004, pp. 565-588.

⁸ Glenn Kessler and Josh White, “Rice Seeks To Clarify Policy on Prisoners; Cruel, Inhuman Tactics By U.S. Personnel Barred Overseas and at Home,” *The Washington Post*, Dec. 8, 2005, p. A1.

⁹ Don Van Natta Jr., “Germany Weighs if It Played Role in Seizure by U.S.,” *The New York Times*, Feb. 21, 2006, p. A1.

¹⁰ Quoted at <http://hrw.org/english/docs/2005/12/16/usdom12311.htm>.

¹¹ Quoted in Seth Stern, “McCain’s Detainee Language May Give Non-Military Interrogators Leeway, Experts Say,” *CQ Today*, Dec. 18, 2005.

¹² *Ibid.*

¹³ Quoted in John M. Donnelly, “Bush Signs Defense Authorization Bill, Repeats Reservations,” *CQ Today*, Jan. 9, 2006.

repudiation decades later of his wartime internment of Japanese-Americans.

The Cold War’s ever-present threat of nuclear war focused attention and power all the more on the president. Meanwhile, the advent of television mag-

nified the president’s ability to speak directly to the people. Yet each of the first three Cold War presidents — Harry S. Truman (1945-1953), Dwight D. Eisenhower (1953-1961) and John F. Kennedy (1961-1963) — was political-

ly weakened by congressional opposition. In addition, domestic- and national-security apparatuses were growing within the executive branch, largely out of public view and, to some extent, beyond the president’s control.

After Kennedy's assassination, Lyndon B. Johnson (1963-1969) took up his predecessor's mantle and used his unequaled mastery of legislative skills to push through Congress a "Great Society" program that rivaled if not surpassed Roosevelt's New Deal. After a landslide election in 1964, however, his presidency crashed and burned in Vietnam. Johnson claimed congressional support for the war on the dubious authority of the controversial Gulf of Tonkin resolution. Despite his doubts about a possible victory, he staved off defeat in Vietnam to avoid being tagged "soft on communism" by the military or congressional Republicans. But by 1968 the war was so unpopular he had to step aside rather than seek re-election.

Richard M. Nixon (1969-1974) expanded presidential powers past the breaking point. Campaigning, he claimed he had a "secret plan" to end the war; in office, he continued the conflict and secretly expanded it into neighboring Cambodia with no congressional sanction. Domestically, he achieved many successes working with a Democratic-controlled Congress, but he angered lawmakers by claiming the authority to "impound" congressionally approved spending.

By the time the Watergate scandal forced Nixon to resign, the office was being weakened. Congress passed the War Powers Act of 1973 to control the president's military powers; a year later, the Congressional Budget and Impoundment Control Act rejected the president's authority to withhold spending. And the Supreme Court's decision in *United States v. Nixon* (1974) requiring him to turn over the Watergate tapes to a special prosecutor put judicial teeth behind the truism that — whatever his powers — the president was not above the law.²¹

'Beleaguered' Presidents

Presidents of the late 20th century governed with the burdens creat-

ed by two national traumas. The Vietnam War made the public wary of military conflicts abroad, while the Watergate scandal left them cynical about government and fearful of official abuses. Three of the five presidents had tenures cut short by the voters, while the two who served the constitutional maximum of two terms were beset by scandals exploited by Congresses controlled by the opposite party. The neo-conservative scholar Aaron Wildavsky saw the presidency as "beleaguered," while political scientist Genovese says each successive president left the office weaker than before.²²

The first two post-Watergate presidents, Gerald R. Ford (1974-1977) and Jimmy Carter (1977-1981), used low-key styles to try to regain public trust. But Ford never recovered from his 1974 decision to pardon Nixon for his Watergate crimes, saving him from a possible trial. With Ford in the White House, the Senate in 1976 responded to a damning report on the CIA as both incompetent and unaccountable by creating a new Select Committee on Intelligence to strengthen congressional oversight of the agency. The House created a counterpart committee the next year.

Carter famously promised in his 1976 campaign that he would never lie to the American people, but his moralistic persona proved ill-suited to national leadership and to managing a Congress controlled by elders of his own party. He also signed the 1978 law providing for appointment of independent counsels to investigate the president or high-ranking executive officials — a statute that would come to bedevil presidents of both parties.

Ronald Reagan (1981-1989) and Bill Clinton (1993-2001) both came to the White House with well-honed communications skills and well-developed policy views. Both had significant legislative successes in their first terms. Both were willing to commit U.S. troops to overseas missions in less than clear-

cut threats to national security. And both won re-election to second terms only to struggle to hold power in the face of political scandals.

Reagan faced a challenge to his credibility and character with the disclosure in November 1986 that the United States had traded arms to Iran in exchange for American hostages and used the illegal profits to funnel aid to the U.S.-backed contras seeking to topple the leftist regime in Nicaragua. Reagan's initial denial — "We did not trade weapons or anything else for hostages" — gave way in March 1987 to an admission that "the facts and the evidence" said otherwise. The scandal resulted in an investigation by a special House-Senate committee and a subsequent critical report as well as the appointment of an independent counsel with ensuing criminal prosecutions. Reagan remained personally and politically popular, but his power in his final two years was at an ebb.

Clinton faced questions about his character throughout his presidency, but they came to a head with the disclosure in January 1998 that he had had sexual encounters with an intern, Monica Lewinsky, inside the White House. Clinton initially denied that he had had "sexual relations with that woman" and repeated that denial in a sworn deposition only to admit an "improper physical relationship" in a grand-jury appearance in August. After receiving a harshly critical report from independent counsel Kenneth Starr, the House voted in November to impeach Clinton for perjury (two counts), obstruction of justice and abuse of office. The trial in the Republican-controlled Senate ended in February 1999 with Clinton's acquittal, but he was left severely weakened for his last two years in office. Clinton's legal troubles also produced a Supreme Court decision, *Clinton v. Jones* (1997), holding that a president could be sued while in office for actions unrelated to his official duties.²³

By the turn of the century, Reagan and Clinton could be credited with revitalizing the president's role as Legislator in Chief — but with mixed results in the face of opposition-controlled Congresses for much of their time in office. Along with George H. W. Bush (1989-1993), they also renewed the commander in chief's power to send troops abroad without a congressional say-so: Reagan to Grenada, Bush to Panama and Clinton in different contexts to Haiti, Somalia and Kosovo. And Bush asked for and got authorization from Congress in 1990 for the U.S. role in the United Nations-mandated Gulf War.

More broadly, however, the presidency suffered from what Genovese calls the “highly personalized, excessively partisan and deeply hurtful” political climate. As a result, he says, “the presidency became a smaller, less dignified office.”²⁴

Post-9/11 President

George W. Bush came to office in January 2001 determined to restore what both he and his vice president, Cheney, viewed as the lost powers of the presidency. The terrorist attacks of Sept. 11, 2001, forged these views into a hard-and-fast policy of asserting maximum presidential authority to fight a war against terrorism at home and abroad.

The Bush-Cheney doctrine got its first test in a domestic policy setting. As head of an energy task force created by Bush in his first month in office, Cheney invoked the president's need for candid advice in refusing to divulge details about its proceedings before release of the group's final report in May 2001 and during a legal battle extending through May 2005. The administration rebuffed requests for information about the task force from Congress and later successfully fought a suit by two interest groups

to use federal access laws to learn of the group's contacts with industry executives.

The White House responded to the 9/11 attacks by simultaneously defending Bush's power as commander in chief to take military action on his own and working with Congress on a resolution to authorize the use of force. Initially, the administration wanted authority to “deter and preempt” future acts of terrorism or aggression. But lawmakers insisted on a narrower resolution directed only against those responsible for the Sept. 11 attacks. It cleared Congress on Sept. 14 — three days after the attacks — with one dissenting vote in the House and none in the Senate.

The administration also had to settle for somewhat less than it wanted in the USA Patriot Act, the broad counterterrorism measure passed by Congress on Oct. 25, 2001. The law increased penalties for terrorism and expanded federal law-enforcement powers in terrorism-related investigations. But Congress balked at the administration's request to indefinitely detain immigrants suspected of terrorism. It also inserted a “sunset” clause to terminate some of the act's provisions after four years. And, significantly for later developments, it included no authority to use foreign-intelligence-gathering wiretaps within the United States.

Bush also drew criticism on Capitol Hill when he issued an executive order on Nov. 13 authorizing military tribunals to try non-citizens suspected of terrorism. “I need to have that extraordinary option at my fingertips,” Bush said a few days later. Democrats and some libertarian-minded Republicans complained, but Bush refused to back off — foreshadowing the stout legal defense of the program that administration lawyers have waged ever since.

With the war in Afghanistan ended in December 2001, the administration in early 2002 began focusing on Iraq. By June, Bush was explicitly warning

of a possible pre-emptive strike — prompting lawmakers to warn against initiating military action without congressional approval. A White House-drafted resolution served as the basis for a measure finally approved in October that authorized Bush to use “necessary and appropriate” force against “the continuing threat posed by Iraq” and to enforce “all relevant” U.N. Security Council resolutions against Iraq. The House approved the measure, 296-133; the Senate, 77-23. Under pressure from Congress and from the United States' main ally — Britain — Bush continued seeking United Nations approval for the action almost up until the day the United States invaded Baghdad on March 19, 2003.

Despite quick success in removing Saddam Hussein from power and subduing the Iraqi army, the United States remains bogged down in a deadly fight with a stubborn insurgency in Iraq. With no final resolution, Bush has been faced with a steady stream of complaints about faulty intelligence — particularly on the issue of Iraq's suspected weapons of mass destruction — and poor planning and execution of postwar reconstruction.

Meanwhile, the administration was coming under increasing criticism in Congress and elsewhere for abuse and torture of suspected terrorists captured in Afghanistan and elsewhere and held at Guantánamo Bay. Rejecting the administration's arguments for a free hand, the Supreme Court in June 2004 ruled that detainees could go to federal courts to challenge their confinement.

By late 2005, Bush was being politically weakened by other issues — notably, the administration's flawed response to Hurricane Katrina in August.²⁵ Polls showed Bush's public approval sagging. Despite resistance by the White House, both the Senate and House included anti-torture provisions in military-funding measures. On Dec. 15, Bush met with McCain

Youngstown Decision Offers Test for President's Powers

Can President Bush authorize the National Security Agency to monitor telephone calls between a U.S. citizen and a suspected terrorist overseas without a judicial warrant? Can he order a foreign terror suspect to be tried before a military tribunal without access to federal courts?

Many experts think the answers are contained in a landmark Supreme Court decision overturning President Harry S Truman's seizure of the nation's steel mills in 1952 to avert a strike during the Korean War. In a concurring opinion in the decision, *Youngstown Sheet & Tube Co. v. Sawyer*, Justice Robert H. Jackson set out a three-tiered structure for judging the scope of the president's power — now recognized as the starting point for any constitutional decision in the area.

Jackson — who had served as attorney general under one of the nation's most powerful presidents, Franklin D. Roosevelt, and was chief U.S. prosecutor at the Nuremberg war-crimes trial in Germany in 1945 and 1946 — reasoned that the chief executive's power depends in part on what, if anything, Congress has said about a particular subject. The president's authority "is at its maximum," wrote Jackson, when he acts "pursuant to an express or implied authorization of Congress." In such instances, the president's power includes "all that he possesses in his own right plus all that Congress can delegate."

By contrast, the president's power "is at its lowest ebb" when he "takes measures incompatible with the expressed or implied will of Congress," Jackson said. Under those circumstances, the president "can rely only upon his own constitutional powers minus any constitutional powers of Congress over the matter."

In the middle are cases where the president has acted "in absence of either a congressional grant or denial of authority," Jackson said. He called this area "a zone of twilight" in which the president and Congress may share authority or the distribution of power between the two branches may be uncertain.

In those instances, Jackson continued, congressional "inertia, indifference or quiescence" may either enable or at least invite the president to act on his own. And the legality of the president's actions, he concluded, would depend "on the imperatives of events and contemporary imponderables rather than

on abstract theories of law."

Bush and his supporters argue that the electronic surveillance and military tribunals fit squarely into Jackson's first category. They say Congress gave Bush the needed powers on Sept. 14, 2001, when it passed the Authorization to Use Military Force against the perpetrators of the 9/11 terrorist attacks. And even if the use-of-force resolution is not read that broadly, administration officials and supporters argue, the president has inherent authority to gather intelligence against a foreign enemy and provide for trials of captured enemy combatants.

Opponents of Bush's policies say the electronic surveillance falls squarely in Jackson's "lowest ebb" category — where Congress has prohibited the president's actions. They say the Foreign Intelligence Surveillance Act specifically requires a court warrant for any foreign-intelligence gathering within the United States. As for military tribunals, the administration's critics contend that despite the president's powers as commander in chief to capture and hold enemy combatants, he cannot bypass provisions of the Uniform Code of Military Justice or the Geneva Conventions that govern hearings for detainees.

In the steel-seizure case, Jackson had no difficulty in concluding that Truman had no congressional authorization for his action. In fact, he argued, it ran afoul of the procedure Congress set out in the Taft-Hartley Act for putting an industry back to work after a strike. He then rejected the Truman administration's arguments that the president had the power to put the steel mills back to work in the face of contrary con-

gressional legislation.

"No doctrine that the Court could promulgate would seem to me more sinister and alarming than that a President whose conduct of foreign affairs is so largely uncontrolled, and often even is unknown, can vastly enlarge his mastery over the internal affairs of the country by his own commitment of the Nation's armed forces to some foreign venture," Jackson wrote.

"With all its defects, delays and inconveniences, men have discovered no technique for long preserving free government except that the Executive be under the law, and that the law be made by parliamentary deliberations," Jackson concluded. "Such institutions may be destined to pass away. But it is the duty of the Court to be last, not first, to give them up."



Supreme Court Justice Robert H. Jackson.

The Robert H. Jackson Center

at the White House and agreed to accept the restriction.

Trying to put the best face on the

reversal, Bush told reporters, "We've been happy to work with [Sen. McCain] to achieve a common objective, and that

is to make clear that this government does not torture." ²⁶

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Is the administration's electronic-surveillance program legal?

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WRITTEN FOR THE *CQ RESEARCHER*, FEBRUARY 2006

Critics who call President Bush a “lawbreaker” for authorizing National Security Agency surveillance of international communications between suspected al Qaeda operatives abroad and people inside our country are focusing on the wrong “law.” In reality, this is a constitutional issue pitting privacy interests protected by the Fourth Amendment against the president’s independent “executive” and “commander-in-chief” powers. The 1978 Foreign Intelligence Surveillance Act (FISA) could no more usurp authority vested by the Constitution in the president’s discretion than Congress could narrow the Fourth Amendment’s protections by mere statute.

John Jay explained in *Federalist No. 64* that the new Constitution left the president free “to manage the business of intelligence as prudence might suggest”; and Washington, Jefferson, Madison, Hamilton and Chief Justice Marshall each noted that the grant of “executive power” to the president included control over foreign relations. In *Marbury v. Madison*, Marshall noted that the Constitution gave the president important political powers about which “the decision of the executive is conclusive.”

In 1818, Rep. Henry Clay reasoned it would be improper for Congress to inquire into foreign-intelligence activities authorized by the president. And in the landmark 1936 *Curtiss-Wright* case, the Supreme Court found Congress “powerless to invade” the president’s “plenary and exclusive power” over international diplomacy.

The Fourth Amendment binds in peace and war, but in neither is it absolute. It prohibits only “unreasonable” searches and seizures — a standard obviously affected when Congress authorizes war — and the idea that warrantless surveillance of our nation’s enemies during wartime is “unreasonable” finds no support in historic practice or judicial opinions. The test involves balancing the privacy interest against the governmental interest, and the Supreme Court has repeatedly observed: “no governmental interest is more compelling than the security of the Nation.”

The courts are clearly with the president. When the Supreme Court held in the 1972 *United States v. United States District Court* case that warrants would be required for national security wiretaps of purely domestic targets (like the Black Panthers), it carefully distinguished its holding from a case involving foreign agents. In 2002, the FISA Court of Review observed that every federal appeals court to consider the issue has held the president has independent constitutional power to authorize warrantless foreign-intelligence wiretaps, and noted “FISA could not encroach upon the president’s constitutional power.”

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WRITTEN FOR THE *CQ RESEARCHER*, FEBRUARY 2006

When Congress authorized secret wiretaps of Americans in the 1978 Foreign Intelligence Surveillance Act (FISA), it required special orders from the FISA court. It did so in order to implement the Fourth Amendment’s command that searches be authorized by judicial warrant to safeguard individual privacy against arbitrary government invasion.

Congress explicitly prohibited any future president from conducting warrantless eavesdropping and made FISA and the criminal wiretap laws “the exclusive means” for carrying out electronic surveillance in the United States. Congress refused to enact any exception for “inherent presidential power” and made it a crime for government officials to wiretap without a warrant.

The president now claims the power to act in violation of FISA as well as the Fourth Amendment’s warrant requirement, citing his commander-in-chief authority. But the president’s authorization of such wiretapping — done in secret and deliberately withheld from the public and the Congress — is unprecedented. Nothing in the Constitution authorizes the president to violate the law or to decide on his own to secretly wiretap Americans — even during wartime.

The Justice Department pays lip service to the principle that the president is bound by the law when it argues that Congress gave the president this power in the authorization to use force against al Qaeda, and that such warrantless surveillance is “reasonable.” The authorization argument is too frivolous to respond to in this limited space. The president’s real claim is that he has exclusive power to conduct such wiretaps, that Congress may not limit that power, and judges may not review it.

The Supreme Court has never upheld such a claim of monarchical power. To the contrary, it reiterated in the *Hamdi* case: “Whatever power the . . . Constitution envisions for the Executive in its exchanges with other nations or with enemy organizations in times of conflict, it most assuredly envisions a role for all three branches when individual liberties are at stake.”

The president can make no claim of necessity for exercising exclusive power. Following the law and obtaining a warrant would not make it impossible to conduct surveillance necessary to prevent future attacks. Courts would issue warrants for surveillance of communications with al Qaeda, which is manifestly reasonable. The Congress would amend FISA if the president demonstrates the necessity, as it has already done since the 9/11 terrorist attacks. The secret program of warrantless surveillance is illegal and unconstitutional.

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CURRENT SITUATION

Detainee Cases

Four years after President Bush ordered the use of military tribunals for suspected terrorists captured in Afghanistan, the administration is now hoping a new law passed by Congress will prevent hundreds of detainees from challenging his action in federal court. Lawyers for the detainees, however, say the government's interpretation of the law is either wrong or unconstitutional.

In December 2005, when Congress passed McCain's anti-torture measure, known officially as the Detainee Treatment Act, it was responding to the Supreme Court's June 2004 decision to allow federal courts to hear habeas corpus petitions filed by detainees held at the U.S. Naval Station at Guantánamo Bay. The act — signed by Bush as part of the Defense Department annual funding measure — provides instead that “no court, justice or judge shall have jurisdiction” to consider a habeas corpus petition filed by any Guantánamo detainee.

Justice Department lawyers now cite the act in asking the Supreme Court to dismiss the Hamdan case, which the justices had agreed to consider in November. The act “plainly divests the courts of jurisdiction” to hear Hamdan's pretrial challenge to the military tribunal, the government wrote in the motion filed with the Supreme Court on Jan. 12. The government is similarly asking the federal appeals court for the D.C. Circuit to dismiss consolidated cases brought on behalf of about 60 other Guantánamo detainees.

In all of the cases, the government is contending that the new law requires

detainees to wait until their cases are decided by the so-called combatant status-review tribunals before coming to federal court. The law also provides that any appeals go to the D.C. Circuit, which would exercise only limited review over the tribunals' decisions.

Detainees' lawyers say the law does not apply to any of the pending cases. The two principal sponsors of the provision — Sens. Graham and Levin — disagree over whether it applies retroactively. If the law is held to apply to Hamdan's case, his lawyer, Georgetown Professor Katyal, argues that Congress cannot suspend habeas corpus except by a more explicit provision and, in any event, has acted improperly by barring the use of habeas corpus only by Guantánamo detainees.

The high court had already scheduled arguments in the Hamdan case for March 28 before the government's motion to dismiss in January. Katyal urged the justices either to reject the motion altogether or, alternatively, to consider the issue along with the merits of the case in the March arguments.

In their action in November, the justices agreed to consider two issues Hamdan raised after the D.C. Circuit had rejected his claims. The first is whether Bush had the power to establish the military tribunals either under his inherent authority or under the use-of-force resolution Congress passed in September 2001. The second issue is whether federal courts can enforce a provision of the Geneva Conventions that, according to lawyers for the detainees, requires a formal court-martial to first determine whether detainees are entitled to prisoner-of-war status with additional procedural safeguards.

Two lawyers on opposing sides of the case speculate that the court may be reluctant to dismiss Hamdan's appeal altogether. “The government is going to have a tough row to hoe on the jurisdictional issue,” says Samp of the Washington Legal Foundation.

Pamela Karlan, a Stanford University law professor who filed an amicus brief in support of Hamdan, notes that under the late Chief Justice William H. Rehnquist, the high court “did not shy away from asserting its jurisdiction over a wide range of issues.” While the court's direction under Chief Justice John G. Roberts Jr. is not yet clear, Karlan stresses that the government wants to block any ruling on Hamdan's legal argument until after the military tribunal has decided his case. “The government is saying not only that the Supreme Court can't hear the case but that none of the courts below can hear it,” she explains.

Roberts will not be participating in the case because he was one of the judges in the D.C. Circuit's ruling. By recusing himself, Roberts raises the possibility of a 4-4 split, which would leave the appeals court's ruling for the government standing. If the justices hear the case on March 28, a decision would be expected in late June.

Surveillance Program

Congress may be backing away from a detailed inquiry into the operations of the NSA electronic-surveillance program as the administration moves toward accepting legislative proposals to provide specific legal authorization for it.

Legislation could complicate court challenges to the surveillance, which in any event face daunting obstacles and are unlikely to be ruled on any time soon.

The Senate Intelligence Committee gave the administration a significant victory Feb. 16 by refusing to take up a motion by the panel's Democratic vice chairman, West Virginia's John D. Rockefeller IV, to open an inquiry on the surveillance program. Republicans have an 8-7 majority on the committee, but two GOP senators — Snowe and Hagel — had called for an inquiry in December.²⁷

Committee Chairman Pat Roberts of Kansas strongly opposes any inquiry as “unwarranted” and potentially “detrimental to this highly classified program.” In the days before the committee’s meeting, the White House helped Roberts resist the inquiry by signaling that the administration would provide more details on the program to the Intelligence Committee and that it might accept legislation to authorize the program with more congressional oversight.

Following the closed-door meeting, Roberts told reporters the committee had adjourned without voting on Rockefeller’s motion. Rockefeller criticized the delay, saying the committee had “once again abdicated its responsibility” to oversee intelligence activities. For her part, Snowe said in a statement that it was “imperative” for the administration to provide more information about the program before the committee’s next scheduled meeting on March 7.

Meanwhile, leaders of the House Intelligence Committee reportedly agreed to open an inquiry into the program, but the scope of the planned review was unclear. New Mexico’s Rep. Wilson, who chairs the panel’s Subcommittee on Technical Intelligence, told *The New York Times* that the review would have “multiple avenues.” But *The Times* quoted a spokesman for committee Chairman Peter Hoekstra, R-Mich., as saying the review would not be “an inquiry into the program” but an examination of ways to “modernize” the FISA statute.²⁸

Two GOP senators are promoting separate proposals for legislation on the issue. Judiciary Committee Chairman Specter is drafting a measure to require the attorney general to seek permission from the FISA court to eavesdrop on U.S. communications, to identify who was being monitored and why and to apply for reauthorization every 45 days. The proposal also would authorize the court to rule on whether the program was constitutional.

Sen. Mike DeWine, R-Ohio, a member of both the Judiciary and Intelligence committees, is instead proposing that Congress simply exempt eavesdropping on al Qaeda or other terrorist groups from FISA’s warrant requirement. His proposal also would require the NSA to provide newly created Intelligence subcommittees with more details on the surveillance.

The White House continues to say that no legislation is needed to authorize the program, but press secretary Scott McClellan said on Feb. 16 the administration is willing to “work with Congress on legislation that would not undermine the president’s ability to protect Americans.” Between the two senators’ proposals, DeWine’s appears to sit better with the White House. DeWine said White House counsel Harriet Miers called him on Feb. 15 to discuss his proposal and suggested only minor changes.

Opponents of the program, meanwhile, are pressing ahead with legal challenges.²⁹ The ACLU and the Center for Constitutional Rights (CCR) filed separate suits in federal courts in Detroit and New York, respectively, challenging the program as a violation of the First and Fourth Amendments and separation-of-powers principles. The ACLU says criminal-defense lawyers, journalists, scholars and nonprofit organizations are among those who fear their communications with people in predominantly Muslim countries are being monitored without just cause. The CCR filed suits in its own behalf.

Separately, two Washington-based groups — the Electronic Privacy Information Center and People for the American Way — are suing the Justice Department and the NSA, respectively, under the federal Freedom of Information Act (FOIA) to try to force disclosure of legal opinions and operational details of the program. In a preliminary ruling on Feb. 16, U.S. District Judge Harry Kennedy directed the Justice Department to turn over

documents within 20 days or provide a list of documents being withheld.

In addition, the Electronic Frontier Foundation, a San Francisco-based, free-speech advocacy group, is suing major telephone companies, claiming their cooperation with the NSA surveillance program violates customers’ privacy rights. The suit is pending in federal court in San Francisco.

The suits face a variety of legal hurdles, including questions about the legal standing of the plaintiffs in the ACLU and CCR suits and broad exemptions for intelligence activities in the FOIA actions.

And even if courts allow the cases to proceed, they are unlikely to issue substantive rulings in the near future. “All these cases take a long period of time,” says Caroline Frederickson, the ACLU’s Washington legislative director. ■

OUTLOOK

Presidential Weakness?

The political scientist Richard Neustadt focused his landmark 1960 study *Presidential Power* not on the strength of the office but on its weakness — with formal powers effectively limited by the other branches of government, private interest groups, the press and public opinion. In a revised edition 30 years later, Neustadt repeated the same theme. The office is inherently weak, he wrote, “in the sense of the great gap between what is expected [of the president] and assured capacity to carry through.”³⁰

George W. Bush entered the White House in 2001 believing the office had been weakened even further. But he seemed to defy its weaknesses with a strategy of boldness. Working with Republican majorities in both houses of Congress, he won major legislative vic-

tories in his first months and then gained enough support after the 9/11 terrorist attacks to wage a quick war in Afghanistan and to get congressional approval a year later for a second war in Iraq.

Today, Bush seems to be paying a price for flexing his political power. With the conflict in Iraq continuing and his domestic agenda stalled, Bush's boldness is now seen on Capitol Hill as high-handedness and among much of the public as manipulateness or outright deception. His approval ratings hover in the low 40 percent range, and some polls indicate a voter shift toward Democrats and away from Republicans.³¹

Bush's slippage may not be simply a backlash to his style of governing, historian McDonald says. "It's a very, very divided country," McDonald says. "The backlash would have come whether he'd been bold or not."

Whatever the reason, the co-equal branches of government are pushing back, if tentatively. The Supreme Court in 2004 rejected Bush's boldest claims in the enemy-combatant cases for his actions to be completely free of judicial review even if they upheld some presidential power to detain them. The cases "were not a tremendous victory for the president," says John McGinnis, a conservative constitutional law expert at Northwestern University in Evanston, Ill.

On Capitol Hill, the Republican-controlled Congress showed virtually no interest in the Social Security privatization proposal that Bush showcased in his 2005 State of the Union address. The laundry list of domestic proposals in his 2006 address on

Jan. 31 seems to have been forgotten within a matter of days.

Instead, the major news from Capitol Hill in February has been the tough grilling administered to Attorney General Gonzales on the electronic-surveillance program and the tongue-lashing delivered to Homeland Security Secretary Michael Chertoff from a special House committee for the bungled response to Hurricane Katrina.

American Enterprise Institute scholar Ornstein thinks resistance, even from GOP lawmakers, was inevitable. "At some point, they will have had enough," he says. "They will realize they are a majority." Still, Ornstein does not expect a direct confrontation between the White House and Congress soon. "It's going to be a while," he says.

For its part, the White House may be coming around to giving Congress a greater role on the two issues — electronic surveillance and detainees — that the administration had previously chosen to handle on its own. Bush ultimately agreed to Sen. McCain's anti-torture proposal. And the White House is signaling that it will accept some legislative fix on the electronic-surveillance program.

Bradford Berenson, a Washington lawyer who served as associate White House counsel in Bush's first term, says the administration should work with Congress on the issues. "Congress should become involved," Berenson remarked at a Feb. 16 forum at Georgetown University Law Center in Washington. "It is the right policymaker to engage with the administration."

Appearing on the same panel, Sen. Specter said both the president and the Congress need to do a better job of the separate roles that each has in the constitutional order. "He's got to tell us more in a democracy," Specter said, "and the Congress has to be a lot more assertive than it has been." ■

Notes

¹ For *The Times'* original story, see James Risen and Eric Lichtblau, "Bush Lets U.S. Spy on Callers Without Courts," Dec. 16, 2005, p. A1. For Wilson's comments and later reaction, see Eric Lichtblau, "Republican Who Oversees N.S.A. Calls for Wiretap Inquiry," *The New York Times*, Feb. 8, 2006, p. A1, and Sheryl Gay Stolberg, "Republican Speaks Up, Leading Others to Challenge," *The New York Times*, Feb. 11, 2006, p. A1. Some background on Wilson drawn from CQ's *Politics in America* (13th ed., 2005).

² Cheney was interviewed on "The NewsHour with Jim Lehrer," Public Broadcasting Service, Feb. 7, 2006.

³ See Michael A. Genovese, *The Power of the American Presidency 1789-2000* (2001).

⁴ *United States v. U.S. District Court*, 407 U.S. 297 (1972). The decision is commonly called the *Keith* case after the federal district court judge whose ruling was upheld by the Supreme Court.

⁵ For background, see David Masci, "Torture," *CQ Researcher*, April 18, 2003, pp. 345-368.

⁶ For previous background, see Adriel Bettelheim, "Presidential Power," *CQ Researcher*, Nov. 15, 2002, pp. 945-968.

⁷ Quoted in Peter Baker and Jim VandeHei, "Clash Is Latest Chapter in Effort to Widen Executive Power," *The Washington Post*, Dec. 21, 2005, p. A1.

⁸ Quoted in Stolberg, *op. cit.* Bush apparently was unaware that his microphone was on and his remarks audible to reporters.

⁹ For background, see Mary H. Cooper, "Privatizing the Military," *CQ Researcher*, June 25, 2004, pp. 565-588.

¹⁰ The Aug. 1, 2002, memo signed by Jay S. Bybee, then director of the Office of Legal Counsel, can be found on FindLaw.com (<http://news.findlaw.com/hdocs/docs/doj/bybee80102ltr.html>). For coverage of Bybee's memo, see Dana Priest and R. Jeffrey Smith, "Memo Offered Justification for Use of Torture," *The Washington Post*, June 8, 2004, p. A1. For



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coverage of similar memoranda, see Neil A. Lewis and Eric Schmitt, "Lawyers Decided Ban on Torture Didn't Bind Bush," *The New York Times*, June 23, 2004, p. A1.

¹¹ For Bush's signing statement, see *Weekly Compilation of Presidential Documents*, Jan. 2, 2006, pp. 1918-1919. For coverage, see two articles by Charlie Savage in *The Boston Globe*: "Bush Could Bypass New Torture Ban," Jan. 4, 2006, p. A1; "3 GOP Senators Blast Bush Bid to Bypass Torture Ban," Jan. 5, 2006, A3.

¹² See Peter Baker, "President Says He Ordered Domestic NSA Spying," *The Washington Post*, Dec. 18, 2005, p. A1. For background, see Kenneth Jost, "Civil Liberties Debates," *CQ Researcher*, Oct. 24, 2003, pp. 871-894; and David Masci, "Civil Liberties in Wartime," *CQ Researcher*, Dec. 12, 2001, pp. 1017-1040.

¹³ See Ronald Brownstein, "Bush's Ratings Sink, but Trust Remains," *Los Angeles Times*, Jan. 27, 2006, p. A1; CNN/*USA Today*/Gallup Poll, www.usatoday.com (posted Feb. 14, 2005).
¹⁴ Congressional Research Service, "Statutory Procedures Under Which Congress Is To Be Informed of U.S. Intelligence Activities, Including Covert Actions," Jan. 18, 2006.

¹⁵ The Supreme Court case is *Hamdan v. Rumsfeld*, 05-184. For court decisions, briefs and selected articles, see www.hamdan-rumsfeld.com. The D.C. Circuit cases are *Al Odab v. United States*, 05-5064, and *Boumediene v. Bush*, 05-5062.

¹⁶ The citations are *Hamdi v. Rumsfeld*, 542 U.S. 507, and *Rasul v. Bush*, 542 U.S. 466, both June 28, 2004.

¹⁷ The case is *Padilla v. Hanft*, 05-533. The Supreme Court had dismissed Padilla's habeas corpus petition on a procedural issue, *Rumsfeld v. Padilla*, 542 U.S. 426 (June 28, 2004), but he filed a new petition to "cure" the defect.

¹⁸ Historical background drawn in part from Genovese, *op. cit.*, and Forrest McDonald, *The American Presidency: An Intellectual History* (1994).

¹⁹ Woodrow Wilson, *Congressional Government* (1885), p. 31, cited in Genovese, *op. cit.*, p. 104.

²⁰ Arthur M. Schlesinger Jr., *The Imperial Presidency* (1973).

²¹ The citation is *United States v. Nixon*, 418 U.S. 683 (1974). For background, see Kenneth Jost, "Independent Counsels Re-Examined," *CQ Researcher*, May 7, 1999, pp. 377-400.

²² Aaron Wildavsky, *The Beleaguered Presidency* (1991); Genovese, *op. cit.* Wildavsky died in 1993.

²³ The citation is *Clinton v. Jones*, 520 U.S.

FOR MORE INFORMATION

American Civil Liberties Union, 125 Broad St., 18th floor; New York, NY 10004; (212) 549-2500; 122 Maryland Ave., N.E., Washington, DC 20002; (202) 544-1681; www.aclu.org. The ACLU filed a broad legal challenge to the warrantless electronic-surveillance program established by President Bush after the 9/11 terrorist attacks.

American Constitution Society for Law and Policy, 1333 H St., N.W., 11th Floor, Washington, DC 20005; (202) 393-6181; www.acslaw.org. A liberal educational organization focusing on preserving individual rights and liberties; co-sponsored former Vice President Al Gore's Jan. 16 speech on presidential power.

The Cato Institute, 1000 Massachusetts Ave., N.W., Washington, DC 20001; (202) 842-0200; www.cato.org. Public-policy organization that advocates limited government.

Center for Constitutional Rights, 666 Broadway, 7th floor, New York, NY 10012; (212) 614-6464; www.ccr-ny.org. Founded in 1966; has been coordinating legal representation of detainees held at the U.S. Naval Station, Guantanamo Bay, Cuba.

Center for National Security Studies, 1120 19th St., N.W., 8th floor, Washington, DC 20036; (202) 721-5650; www.cnss.org. A research and advocacy organization, founded in 1974 and now affiliated with George Washington University, that seeks to prevent claims of national security from eroding civil liberties and constitutional protections.

Center for the Study of the Presidency, 1020 19th St., N.W., Suite 250, Washington, DC 20036; (202) 872-9800; www.thepresidency.org. A nonpartisan center founded in 1979 to further the understanding and functioning of the U.S. presidency.

Federalist Society, 1015 18th St., N.W., Suite 425, Washington, DC 20036; (202) 822-8138; www.fed-soc.org. Founded in 1982 to promote conservative and libertarian views in opposition to what it saw as a dominant liberal ideology at U.S. law schools.

Heritage Foundation, 214 Massachusetts Ave., N.E., Washington DC 20002; (202) 546-4400; www.heritage.org. Founded in 1973; seeks to formulate and promote conservative public policies.

681 (1997).

²⁴ *Ibid.*, p. 189. See also Adriel Bettelheim, "State of the Presidency: What Bush Inherits," *CQ Weekly*, Jan. 20, 2001, p. 162.

²⁵ For background, see Pamela Prah, "Disaster Preparedness," *CQ Researcher*, Nov. 18, 2005, pp. 981-1004.

²⁶ See John M. Donnelly and Anne Plummer, "After Long Fight, McCain Wins Bush's Support on Treatment of Detainees," *CQ Today*, Dec. 15, 2005.

²⁷ See Mary Speck, "Revamp of Spy Program Gets Boost," *CQ Today*, Feb. 16, 2006; and these Feb. 17 stories: Charles Babington and Carol D. Leonnig, "Senate Rejects Wiretapping Probe," *The Washington Post*; and Greg Miller and Maura Reynolds, "Spying Inquiry Blocked by GOP," *Los Angeles Times*.

²⁸ See Eric Lichtblau and Sheryl Gay Stolberg, "Accord in House to Hold Inquiry on Surveillance," *The New York Times*, Feb. 17, 2006.

²⁹ Cases discussed and Web sites for more information include *American Civil Liberties Union v. National Security Agency* (www.aclu.org/nsaspying); *Center for Constitutional Rights v. Bush* (www.ccr-ny.org/v2/legal/govt_misconduct/docs/NSAComplaintFINAL11706.pdf); *Electronic Privacy Information Center v. Department of Justice* (www.epic.org); *People for the American Way Foundation v. National Security Agency* (http://media.pfaw.org/pdf/civil_liberties/PFAWFvsNSAComplaint.pdf); and *Hepting v. AT&T Corp.* (www.eff.org).

³⁰ Richard E. Neustadt, *Presidential Power and the Modern Presidents: The Politics of Leadership from Roosevelt to Reagan* (1990), p. ix. Neustadt died in 2003.

³¹ See Dan Balz, "Bush's Midterm Challenge: Rebuilding Public Support May Bolster GOP Candidates," *The Washington Post*, Jan. 29, 2006, p. A1.

Bibliography

Selected Sources

Books

Genovese, Michael A., *The Power of the American Presidency 1789-2000*, Oxford University Press, 2001.

A professor of political science at Loyola Marymount University provides an historical overview of the growth — and limits — of presidential power with individual portraits of each chief executive from George Washington through Bill Clinton. Includes appendices, notes and an 11-page bibliography. Genovese is also co-editor with Robert J. Spitzer of *The Presidency and The Constitution: Cases and Controversies* (Palgrave Macmillan, 2005), a compilation of excerpts of major Supreme Court decisions affecting presidential powers.

McDonald, Forrest, *The American Presidency: An Intellectual History*, University Press of Kansas, 1994.

A professor emeritus at the University of Alabama describes his book as “a history of the idea of the presidency — how it was born, how it was initially implemented, how it has evolved, and what it has become through practice.”

Neustadt, Richard E., *Presidential Power and the Modern Presidents: The Politics of Leadership from Roosevelt to Reagan*, Free Press, 1990.

The late professor of political science at Harvard University emphasized the personal rather than the formal aspects of presidential power in an updated version of his classic study, originally written in 1960. Includes detailed notes.

Wildavsky, Aaron, *The Beleaguered Presidency*, Transaction Publishers, 1991.

A longtime professor of political science at the University of California-Berkeley until his death in 1993 argued that Lyndon B. Johnson’s presidency ushered in a period of significantly increased criticism that left him and subsequent presidents “beleaguered” — under perpetual assault. Includes brief chapter notes.

Yoo, John, *The Powers of War and Peace: The Constitution and Foreign Affairs After 9/11*, University of Chicago Press, 2005.

A law professor at the University of California-Berkeley and formerly a high-ranking Justice Department lawyer under President George W. Bush, argues that the Constitution vests “the bulk” of powers over foreign and military affairs to the president. Includes detailed notes.

On the Web

The White House’s Web site is at www.whitehouse.gov. *The Weekly Compilation of Presidential Documents* can be found at www.gpoaccess.gov/wcomp/index.html. The Presidency Research Group, a section of the American Political Science Association, provides articles, bibliographies, course syllabi and other information on line at <http://cstl-cla.semo.edu/Renka/prg/>; the moderator is Russell Renka, a professor of political science at Southeast Missouri State University, Cape Girardeau.

Books on the Presidency From CQ Press

CQ Press publishes a number of reference works and college texts about the U.S. presidency.

Michael Nelson’s comprehensive two-volume *Guide to the Presidency* (8th ed., 2006) provides an array of factual information about the institution and the presidents, along with analytical chapters that explain the structure and operations of the office and the president’s relationship to Congress and to the Supreme Court. *The Presidency A to Z* (3rd ed., 2003) is a one-volume encyclopedia with more than 300 alphabetical, easy-to-read entries.

Nelson, a professor of political science at Rhodes College, is also editor of *The Presidency and the Political System* (8th ed., 2006), a collection of 21 essays examining presidential powers and perceptions, and co-editor with Richard Ellis of *Debating the Presidency: Conflicting Perspectives on the Executive* (2006), pro-con essays written as debate resolutions on a series of pivotal issues facing the modern presidency.

The Politics of the Presidency (Joseph A. Pika and John Anthony Maltese, rev. 6th ed., 2006) provides an in-depth assessment of the institution, the individuals who have served, the presidents’ interactions with the public and their impact on public policy. For a substantive look at the current administration, *The George W. Bush Presidency: Appraisals and Prospects* (edited by Colin Campbell and Bert A. Rockman, 2004) is a collection of essays that provides measured and nuanced assessments of Bush’s accomplishments, failures and frustrations at a particularly eventful time in U.S. history. For an innovative theoretical study, *Going Public* (Samuel Kernell, 3rd ed., 1997) examines the increasingly frequent presidential practice of appealing for support directly to the public.

The Presidents, First Ladies, and Vice Presidents: White House Biographies, 1789-2005 (Daniel C. Diller and Stephen L. Robertson, 2005) highlights the public and private lives of chief executives, their wives and their seconds-in-command. Other reference titles include *Presidential Elections 1789-2004* (2005), a comprehensive guide to the history and evolution of U.S. presidential elections, and *Presidential Winners and Losers: Words of Victory and Concession* (John Vile, 2002), a collection of more than 500 speeches and other documents from George Washington to George W. Bush relating to the outcome of elections.

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Additional Articles from Current Periodicals

Courts

Goldstein, Amy, and Jo Becker, "Alito Hearings Conclude," *The Washington Post*, Jan. 14, 2006, p. A3.

Confirmation hearings for Supreme Court nominee Samuel A. Alito Jr. explored his support for the "unitary executive theory," which Bush embraced to justify controversial anti-terrorism policies.

Lewis, Neil A., "Court Gives Bush Right to Detain U.S. Combatant," *The New York Times*, Sept. 10, 2005, p. A1.

A federal appeals court panel ruled that President Bush had the authority to detain American citizens as enemy combatants if they fought U.S. forces on foreign soil.

Richey, Warren, "Military Tribunals to Get a Test in Supreme Court," *The Christian Science Monitor*, Nov. 8, 2005, p. 1.

The Supreme Court will examine whether the president can try al Qaeda suspects before military commissions.

Weinstein, Henry, "Debating the Power of the Presidency," *Los Angeles Times*, Aug. 14, 2005, p. A20.

Supreme Court nominee John G. Roberts Jr. may have a big impact on executive power, probably sympathizing with presidential claims of authority.

Electronic Surveillance

"Surveillance Static," *The Houston Chronicle*, Feb. 8, 2006, p. B10.

Sen. Lindsey Graham, R-S.C., and other Republicans expressed fears about Bush's secret surveillance program.

Balz, Dan, and Claudia Deane, "Differing Views on Terrorism," *The Washington Post*, Jan. 11, 2006, p. A4.

Americans are divided sharply along partisan lines over the legitimacy of Bush's domestic eavesdropping program.

Barr, Bob, "Presidential Snooping Damages the Nation," *Time*, Jan. 9, 2006, p. 34.

Former Rep. Bob Barr, R-Ga., rejects the Bush administration's defense of its secret electronic-surveillance program.

Ebrahim, Margaret, "Warrantless Surveillance Debated During Ford Term," *The Philadelphia Inquirer*, Feb. 5, 2006, p. A10.

Debate over warrantless domestic wiretaps in terrorism investigations also erupted during the Ford administration.

Yen, Hope, "Bush Broke Law in Spying Request, Specter Says," *The Houston Chronicle*, Feb. 6, 2006, p. A6.

Sen. Arlen Specter, R-Pa., said Bush violated the Foreign Intelligence Surveillance Act when he failed to seek court approval for secret domestic surveillance.

Executive Power

Feldman, Noah, "Who Can Check the President?" *The New York Times Magazine*, Jan. 8, 2006, p. 52.

Feldman profiles the history of the presidency, the Bush administration's push to extend presidential power and the role of the Supreme Court and Congress in checking the president's power.

Stevenson, Richard W., "For This President, Power is There for the Taking," *The New York Times*, May 15, 2005, p. 3.

Stevenson says Bush has not fundamentally altered the presidency in ways that will outlast his tenure, arguing that what the president has done is a product of a particular time and place.

Wartime

Russell, Gail, "Senate Target: Bush's War Powers," *The Christian Science Monitor*, Feb. 1, 2006, p. 1.

The Republican-controlled Congress has gone along with the Bush administration's moves to aggressively expand presidential power in wartime, but that deference may be coming to an end.

Savage, David G., "The Power of the President," *Los Angeles Times*, Feb. 6, 2006, p. A10.

Bush argues the president has an "inherent authority" to act without first seeking congressional approval in wartime.

Silva, Mark, "In the Midst of Conflict, George W. Bush is Not the First to Stretch the Powers of the Executive," *Chicago Tribune*, Jan. 12, 2006, p. C1.

Bush belongs to a long line of presidents who asserted extraordinary powers in wartime, but some legal scholars and critics say he is claiming war powers like few before him.

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