

Pushing the Envelope: Executive Power & President George W. Bush

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Over the last few years, there has been a significant academic and legal discussion about the powers of the United States Presidency with regards to national security powers. This discussion has developed a unique and abstract framework. However, this discussion has been elevated with the Presidency of George W. Bush beyond academic discussion groups and legal journals. Specifically, issues like warrantless wiretapping, extraordinary rendition programs, and various other war powers have become discussions around dinner tables and office water coolers. This article aims to discuss both of the legal and academic frameworks of executive powers to help demonstrate how the Bush Administration has pushed the envelope in claiming extraordinary powers to the detriment of the separation of powers between the legislature, the courts, and the executive branch in an ongoing national security concern.

“After the chaos and carnage of September 11th, it is not enough to serve our enemies with legal papers.”
President George W. Bush

In times of war, the President of the United States has been granted many more powers than in times of peace. Given the substantial national security concerns in what has been characterized as a wartime period, President Bush has laid claims to presidential war powers just like every other president in the modern era. When analyzing the differences between the theoretical perspectives on the presidency and their subsequent practices, it has become blatantly apparent that President George W. Bush has had a personal impact on the practices of the executive branch. This development has dramatically expanded executive power beyond the traditional practices of the presidency, even with regards of claiming powers within the national security apparatus. While these new practices, instituted by the executive branch, have been presented to the public in the manner of national security, they have actually been to the detriment of the legislature, the judiciary, and the American people.

THEORETICAL FRAMEWORK

The actions of many offices are simply ignored. When the office is situated on 1600 Pennsylvania Avenue in Washington DC, the world is sure to notice. In understanding the actions of arguably the most powerful office in the world, theoretical frameworks on how the presidency operates in relation to other variables are important in putting events and practices in context. It is with this in mind that many scholars have studied, evaluated, and theorized about the Executive Branch and how it operates. While this fascination

crosses many Presidential terms, the George W. Bush Administration, like the Richard Nixon Administration, has brought about a particular brand of presidential research.

The focus of this research pertains to the extent to which the executive branch can claim power on various administrative and rulemaking activities and the subsequent impact of such claims. While this is a broad scope of research, special attention has been paid to the extent to which the president can claim executive privilege in disclosing, or not disclosing, such actions.¹ These actions can either involve whether the White House wants to classify, declassify, or even reclassify documents or cooperate with a Congressional investigation about the inner workings of a particular discussion.

Upon such a discussion, focusing particular presidential theories present a rationale for how executive power is managed and used. Both present a basis in which a president can claim greater executive power in lieu of sensitive national security concerns. While many of the minute details make it hard to make general claims about presidential activities, the theories of Richard Neustadt, Stephen Skowronek, and Theodore Lowi present general constructs of presidential

¹Executive Privilege is “the assertion made by the President or other executive branch officials when they refuse to give Congress, the courts, or private parties information or records which have been requested or subpoenaed, or when they order government witnesses not to testify before Congress” (C-SPAN).

behavior and help explain how presidents approach their jobs and policy initiatives.

Richard Neustadt's book *Presidential Power* is considered the corner stone of presidential research and presents a rather positive view of what it means to be president. In a very concise presentation of Neustadt's work, Robert Pallitto and William Weaver state the modern period of presidents as a period in which the executive branch "... operates according to shared rules of presidential conduct and who resolves problems according to shared rules of presidential conduct...through diplomacy and tact" (2007). With such a clear style and approach, an emphasis is placed on the individual style and leadership skills of the office holder.

Within such a dynamic, the president is then in possession of two types of powers: the powers explicitly laid out in Article II of the United States Constitution and the informal powers that accompany any administrator of a large bureaucracy (Neustadt, 1980). The more explicit of the powers would be that the President "...shall from time to time give to the Congress information about the State of the Union" (The Constitution of the United States, 2002). Informal powers, on the other hand, are not explicit or even mentioned by name in the Constitution but stem from other events. Essentially, the personal style of leadership will dictate how a president will use informal and formal powers during their terms. What is not addressed is how poor leadership could affect the presidency and ultimately the general governmental structure.

Stephen Skowronek's theory of presidential actions focuses more on the social and institutional environments in which the executive branch operates. Through this framework, he contends that the institution of the presidency is not a solid structure and that social changes and historical events have molded the institution of the presidency into a broader structure that reacts to its current political restraints (Skowronek, 1997). This evolutionary pattern has also had an effect on the operational status of the executive branch in which it has acquired new roles in legislative actions. A primary example is the yearly budget proposal. It is not stipulated that the executive branch has to create such a proposal in Article II, but rather, it is stipulated that Congress shall appropriate the budget (The Constitution of the United States, 2002). This change may have occurred to fulfill operational responsibilities of the structure, but regardless, the structure of the executive has shifted nonetheless.

Theodore Lowi presents a different picture of the executive branch, however. He claims that with the combined decline of both judicial and legislative oversight and the diminishing impact of political parties on the executive that the presidency has become an "excessive personification of the American government" (Lowi, 1986). This personification characterization is reflective of the responsiveness of the three branches. By far, the executive branch has become a more reactive body with a central decision maker and a bureaucracy that can easily institute new programs. The

Congress, however, was created in a manner that does not allow for such efficiency and the courts can only make their policy judgments in lieu of an ominous and expensive judicial process. Thus, with more powers being presented to one branch of government, the other two branches move slower and can't easily reassert their authority because of their impeding structures.

With public emphasis on the executive branch, the other participants (the other two branches of power) are deemed meaningless and barriers to the agenda of the executive. Essentially, in the words of Lowi, when the other branches (the legislative branch in particular) forfeit some power during extenuating circumstances, they are essentially committing "legiscide" (Lowi, 1986). This represents an affirmation of executive actions by the other branches. However, this is not simply an institutional explanation on Lowi's part. Instead, he contends that it is the sum of institutional changes and outside forces like parties and the leadership of government institutions that act as a catalyst for change, not the structure itself. Rather, Lowi assimilates Neustadt's personification of offices to other branches and outside groups to account for the changes (Lowi, 1986).

Effectively, those institutions (parties and the other branches) reinforce a growing structure that favors a strong executive that can act quickly while rendering such groups in a position in which it will take them a long time to regain the power that has been presented to the executive branch. Thus, for Congress to regain power from the executive, variables, like the type of personalities in leadership, have to evolve correctly through procedures and elections to overcome the structure of Congress. The same types of problems stifle the judiciary's ability to push back. Unlike both of these branches and outside sources, however, the executive is more responsive to the will of the citizenry, making it the "personified" branch of government (Lowi, 1986).

Lowi's perspective is indicative of the practices associated with growing executive power during two distinct presidencies. Both the Nixon and Bush administrations effectively maneuvered the executive branch in a manner that adjusted to the outside variables while maximizing the powers of the office. This process, however, reflects Neustadt's emphasis of personal leadership and perspective on how to execute the powers of the office. It is the combination of these perspectives and the current operational environments presented by Skowronek that explain why both administrations could stretch the claims of presidential powers to a degree that can or attempt to neglect the other branches of government.

MANNERISMS AND TOOLS OF THE TRADE

Following the impeachment and subsequent pardon of Richard Millhouse Nixon, the focus of presidential studies became cataclysmic structural failure- the study of what went wrong. The prominent claim that arose from this national discussion is often referred to as the imperial presidency. Arthur Schlesinger claims of an imperial presidency were

reactive and demonstrated how Presidents after Franklin Delano Roosevelt sought to expand executive power. However, Schlesinger's focus was to provide solutions to tame a growing executive branch. His analysis of power distribution between the three branches of government provides some parallel insights into current institutional concerns.

The assumption of that power by the Presidency was gradual and usually under the demand or pretext of emergency. It was as much a matter of congressional abdication as of presidential usurpation. As it took place, there dwindled away checks, both written and unwritten that had long held the Presidency under control. The written checks were in the Constitution. The unwritten checks were in the forces and institutions a President once had to take into practical account before he made decisions of war and peace...

(Schlesinger, 1973).

The overarching characteristic of this imperial presidency was that the executive branch had exceeded the original intent of the framers and that powers of the executive had become so pronounced that the legislature could do relatively little to thwart overreaching power grabs by the executive, thus perpetuating a continuing power imbalance. His argument reflects an emphasis that national security concerns and the claims of executive privilege have subverted the original intent of the framers of the Constitution. He claimed that this development was a detriment to public policy and national security interests of the United States (Schlesinger, 1973).

Schlesinger's book was published in 1973, following the demise of the Nixon Administration and had a significant impact on the actions of Congress to reassert its oversight and policymaking abilities. However, some critics claimed that the actions to reign in the executive branch were actually weakening the ability of the branch to act effectively when handling the federal bureaucracy. Such individuals include the current Vice President, Richard Cheney, and his chief legal aid, David Addington (Rosen, 2007).

UNITARY EXECUTIVE

This "factions approach" to the executive branch is quite different from that of Schlesinger. The general framework of the practice, which has become somewhat of an ideology in Federalist Society² circles, was developed in a Harvard Law Review article in 1992. The authors, Steven G. Calabresi and Kevin H. Rhodes, asserted that the legislative branch had broadened its powers into executive and judicial decision making processes at the expense of both branches (1992). John W. Dean³ presents the best explanation of Unitary Executive theory in the following:

Simply stated, the unitary executive means that the president controls the entire executive branch, including all of the independent regulatory agencies created by Congress. In national security matters, it designates the president as the 'sole organ,' and as commander in chief he alone can decide when to go to war or when to make peace. In the most extreme form unitary executive theory can mean that neither Congress nor the federal courts can tell the president what to do or how to do it, particularly regarding national security matters

(Dean, 2007).

While this perspective may seem very intrusive to the separation of powers doctrine, supporters of the unitary executive continually reassert Article II of the Constitution as the justification of such an approach. Rhodes and Calabresi point to a hierarchical structure within the executive branch and that all powers are specifically vested in "a President", not a bureaucratic structure (1992). According to Dean, he claims that this specified theory has been significantly broadened under Bush administration (2007). Barton Gellman, of the Washington Post, analyzed the unitary executive beliefs in the Bush administration:

Congress makes the laws; the Supreme Court which interprets them—cannot limit the president's authority as commander in chief because the president has an independent obligation to interpret his constitutional powers. Only he can decide what the limits are...

(PBS, 2007).

This perspective dramatically elevates the prominence of the presidency within the bureaucracy. Legal scholars have repeatedly challenged this reading of the Constitution and the subsequent possibility of abuses of power. However, a former lawyer from the Justice Department's Office of Legal Council, John Yoo has become the face of the unitary executive debate. John Yoo teamed up with Stephen Calabresi to tackle the history of the unitary executive and assert that history demonstrates that presidencies have feverishly protected their control over the bureaucracy (Calabresi & Yoo, 2003). However, this theory is now meeting practical problems; including the possible extension of executive privilege to various bureaucracies or even the possibility of circumventing Congressional intent which will be discussed later.

Considering these theoretical frameworks, Neustadt's framework best suits a description how the presidency of George W. Bush has operated. His personification and approach to the office has asserted a new imperial presidency in which the executive branch has asserted itself in a position of dominance forsaking the powers of the other branches in

²The Federalist Society is a group of Conservative oriented legal professionals who oppose the current process of teaching "orthodox liberal ideology" as the practice of law. Their goals are to "create a conservative and libertarian intellectual network that extends to all levels of the legal community" (<http://www.fed-soc.org>).

³John W. Dean was the White House counsel for the Nixon Administration and was charged with obstruction of justice for his involvement in the Watergate scandal. He spent four months in prison, but was an integral figure in connecting the evidence to the acts perpetrated inside the White House.

the name of national security. The execution of the unitary executive claim by the Bush Administration has made presidential powers stronger than at any other period in the modern presidency. Specific examples of the expansion of executive power include the use of signing statements, the management of prisoners from the War on Terror, and the wiretapping of American citizens.

SIGNING STATEMENTS

After the Congress passes a bill, it is then sent to the President's desk for either a signature or a veto. At least that was the standards for which the public understands the relationship between the two branches. However, there has been a third option which was primarily used for tradition, but now, has been made a tool of the executive branch. With this third option, the president can sign the bill into law and attach what is called a signing statement.

These statements have traditionally commented on the legislation being enacted. The American Bar Association has documented that the Bush administration has issued 800 of such statements whereas "600 [were] issued since the beginning of the republic" (American Bar Association, 2006). What has been particularly disturbing about this process has been that these statements have not met the traditional approach in which these statements act as comments about the legislation. The typical use of a signing statement would look President Clinton's signing statement of the Omnibus Consolidated Appropriations Act of 1997:

This bill is good for America, and I am pleased that my Administration could fashion it with the Congress on a bipartisan basis. It moves us further down the road toward our goal of a balanced budget while protecting, not violating, the values we share as Americans—opportunity, responsibility, and community

(United States GAO, 2007).

Generally, these statements were used primarily as press releases at significant signing ceremonies. Now, these "meaningless" statements have been transformed into legal documents in which the President has been able to interpret how the executive branch will execute the law. One such example would be President Bush's signing statement for the National Transportation Safety Board Reauthorization Act of 2006 stating the following:

The executive branch shall contravene section 11(c) of the Act, relating to executive branch reports to the Congress concerning investigations of alleged criminal and fraudulent activities in connection with a specified project, in a manner consistent with the constitutional authorities of the President to supervise the unitary executive branch and to withhold information the disclosure of which could impair the performance of the Executive's constitutional duties, including the conduct of investigations and prosecutions to take care that the laws be faithfully executed

(Government Printing Office, 2006).

The distinction between these two statements dramatically demonstrates the differences between the approaches to executive powers. This is quite alarming to legal scholars in particular because it is seen as a violation of the separation of powers because the President can simply ignore the intent of Congress (American Bar Association, 2006). Following one of the central tenets of the Unitary Executive, the Bush administration uses this power to claim absolute control over the executive branch, forsaking Congressional actions.

On at least four occasions during the Bush-Cheney tenure, Congress passed laws forbidding U.S. troops from engaging in combat in Colombia, where the U.S. military was advising the government in its struggle against narcotics-funded Marxist rebels. It also capped the number of troops and civilian government contractors the United States could deploy to Colombia. After signing each bill into law, Bush used a signing statement to inform the military that he need not obey any of the Colombia restrictions because he was commander in chief. The combat ban and troop cap, he declared, would be interpreted merely advisory in nature

(Savage, 2007).

With such an ominous perspective of presidential power, even legislation with vast media coverage can fall victim to this revisionist approach to the American political system. Every year, the Congress and the President have to pass twelve appropriation bills so that the U.S. government and its agencies can continue to operate. In the event that these bills are not passed, the federal government will shutdown like in 1996 where Congressional Republicans and President Clinton could not formulate a common budget. In 2006, President Bush had signing statements for 11 of the 12 appropriation bills and "these signing statements single out 160 provisions in the appropriations acts that raise some constitutional concern or objection of the President" (United States GAO, 2007).

The Congress has held hearings and issued reports about this significant change in the executive's procedural methodology but has had no victories in attacking the President's encroachment on the powers explicitly guaranteed to Congress under Article I of the U.S. Constitution. This subversion of legislative intent has had significant impact in the relevancy of the Congress in national security matters and their subsequent acquiescence to the executive has allowed the President of the United States to virtually ignore the separation of powers doctrine explicitly laid out in the first three articles of the Constitution.

GUARDED AND UN-PROTECTED

The detainment of individuals at Guantanamo Bay and the use of extraordinary rendition are examples of blatant attempts and successes at extending the imbalance of power in favor of the White House. Guantanamo Bay, Cuba, represents the cleverly constructed nexus in which international law and U.S. laws cannot adequately account for procedures regarding the detention of accused individuals. Most of these

individuals have been detained from such places as Afghanistan and Iraq. In what would constitute a normal procedure, these individuals would be prosecuted for their crimes in an International Criminal Court, as prescribed by the Geneva Conventions, or in the U.S. court system. Again, these were the normal procedures.

However, the Bush administration, in lieu of the concerns about intelligence being made public, did not designate these individuals as prisoners of war; instead, the U.S. government designated these individuals as enemy combatants. This new designation, according to the President and his legal counsel, suspended the traditional rules and institutions for which traditional prosecution would take place. Instead, the administration avoided the 1866 Supreme Court ruling of *Ex Parte Milligan*⁴ in which military tribunals were not allowed to operate on U.S. soil when federal courts were open (Hartman, Mersky, & Tate, 2007). By imprisoning these individuals on U.S. military controlled territory outside of the jurisdiction of the courts, the standard of using the federal court was circumvented to provide for more executive control.

This disturbing development allowed the Bush administration to develop a judicial system with limited or no oversight. Thus, enemy combatants can sit in a cell for an undetermined amount of time without being apprised of the charges or even seeing a lawyer. Again, this has only been made possible with an administration placing itself as the sole instrument in the of the U.S. government in apprehending, holding, and creating the rules of detainment with regards to enemy combatants.

The individuals of Guantanamo Bay may have had their rights of habeas corpus⁵ suspend because of the current executive-instituted structure, but at least the U.S. government is willing to recognize that those individuals are in U.S. custody. In a program called extraordinary rendition, the U.S. government has gathered individuals like Mohammed Haydar Zammar⁶ and placed them on a planes destined for the most remote regions of the world (Grey, 2007). These transports are not simply to move people around, however. This program is used, and has been significantly expanded since 2001 to transport terrorism suspects around the world to countries that use interrogation practices that are condemned under international and U.S. laws. This secret, and recently

revealed, program has been promoted under the executive branch's ability to cut through the "red tape." Robert Baer, a former CIA operative in the Middle East and familiar with the program, stated the following:

If you want a serious interrogation, you send a prisoner to Jordan. If you want them to be tortured, you send them to Syria. If you want someone to disappear — never to see them again — you send them to Egypt

(American Civil Liberties Union, 2005).

With such a structure, guilt is assumed and justice is abandoned. These extraordinary practices of detaining individuals and flying them around the world to places like Iraq, Syria, Egypt, Guantanamo Bay, Jordan, and Diego Garcia stress the extent to which the President of the United States has sought to expand the executive branch's power concerning the coercive practices of interrogation in the name of national security.

These individuals may or may not be guilty, but nonetheless, the Congress tried to stipulate that they were not to be tortured with a bill sponsored by Senator John McCain. The public debate was heated about the topic, but Sen. McCain had forced President Bush to sign the measure.⁷ However, it was through a signing statement that these new provisions were simply ignored in enforcement because it encroached upon the executive branch's ability to operate and manage the war powers granted to the President under Article II of the Constitution (Savage, 2007). The claim of a unitary executive bypassed the legislature and spun the discourse in the public arena as counterproductive to the nation's national security apparatus.

Instead, abuses of detainees, like the events of Abu Graib, have been publicized as single events that are irregular to the current practices of enemy detention. Documents obtained through a Freedom of Information Act request by the American Civil Liberties Union demonstrate that the continued use of coercive methods in interrogations continue to take place (Jaffer & Singh, 2007). All represent the actions of an expansion of the executive branch's ability to circumvent legal institutions and common practices. However, the Bush administration has not only ignored those principles and laws that cover individuals in foreign lands.

LISTENING IN

Normally, wiretapping would require a warrant from a federal judge, unless the call was being placed to or from a foreign country. In such a case, the Attorney General could certify the act under the Federal Intelligence Surveillance Act (FISA)⁸. However, the Bush administration has used such programs to use broader wiretap sweeps without such oversight. On December 16, 2005, the New York Times broke the

⁴Ex Parte Milligan was a case set during Reconstruction in which the U.S. government was trying U.S. citizens under the Military Courts because of martial law. The Court ruled that in the absence of open rebellion and a functioning federal court system that citizens should be tried in the later. (Hartman, Mersky, & Tate, 2007)

⁵Habeas Corpus is a legal writ requiring that a person be brought before a judge to investigate the lawfulness of his or her detention. (Oxford American, 1999)

⁶Mohammed Haydar Zammar was released after two years of captivity in Syria. He recently tried to sue the U.S. government, but his case was not taken because much of the evidence remains classified (Grey, 2007).

⁷Senator McCain was a staunch advocate for prisoner rights after being held as a prisoner during the Vietnam War. The remnants of his physical abuse are still visible at public events.

story that the Bush Administration had authorized the use of warrantless wiretapping of United States citizens who were making calls to foreign countries (Risen & Lichtblau, 2005). Again, the executive branch was willing to break legal and customary norms to maximizing its power in the name of national security.

Standing before the Attorney General of the United States, John Ashcroft, in his hospital room were the White House legal counsel, Roberto Gonzalez, the President's Chief of Staff, Andy Card, and the Justice Department's Head of the Office of Legal Council, Jack Goldsmith. The reason for such a visit wasn't to bring well wishes to the suddenly ill Attorney General. Instead, there was a power struggle over a highly classified intelligence program that involved domestic wiretapping. Goldsmith describes the incident like this:

Gonzales spoke very briefly, and then, in one of the most extraordinary events I've ever seen in my life, Attorney General Ashcroft kind of lifted himself — he arose from the bed, lifted himself up and gave about a two- or three-minute speech or talk, addressed to Gonzalez and Card in which he basically — I can't get into the details, but he showed enormous, unbelievable clarity about what the issues were and what was going on, and he explained why he also would not approve the program. He read them a bit of the riot act, and then at the end of all this he said, "And in any event, I'm not the attorney general now; Jim Comey is," because Jim Comey was the acting attorney general

(PBS, 2007).

Jim Comey and Jack Goldsmith eventually put a temporary pause on the practice of warrantless wiretapping, but after Alberto Gonzalez became the new Attorney General, the practice returned and Justice Department Officials left in a mass exodus. The reasoning was that the legal basis for warrantless wiretapping was incorrect and bordering on the basis of being blatantly illegal. However, this program continues to be used today under some new legislative oversight. When John Yoo, a proponent of the Unitary Executive and former Justice Department Official in the George W. Bush administration, was asked about gathering such intelligence on the home front, he stated the following:

I think that's right. Again, if you're going to gather intelligence and follow members of Al Qaeda outside the United States, you don't want to make the United States some kind of safe haven where once they cross the borders into our country it actually becomes harder to find them and track them down. That would be perverse; exactly the reverse kind of

⁸FISA was passed in 1978 and created a Federal structure wherein wiretapping could be made possible for "clandestine intelligence activities" but also requires that if wiretapping is done in the United States a warrant must be attained through the FISA courts. This structure came to fruition after it was publically revealed in Sen. Church's investigation into Watergate that the Nixon Administration had used the NSA for domestic wiretapping. (Pallitto & Weaver, 2007).

powers that you want our government to have when it's fighting especially this kind of enemy, which tries to infiltrate our borders and launch surprise attacks

(PBS, 2007).

However, this isn't the only incident in which information about United States citizens is being collected. Phone and internet providers are also being asked to provide access to their systems to help in the collection of information. In San Francisco during the later part of 2002, there was a meeting between the top executives of AT&T and the government. Within the next few months, a new room was created in the Folsom Street office wherein only one individual is allowed to enter. That individual must be a National Security Agency employee. Why would such a development be worrisome? This new room has the capability of monitoring more than outgoing phone calls. Mark Klein, a former telecommunications employee for AT&T, stated the following in a PBS Frontline broadcast:

Now, in October, while I was working and learning the Internet room, I came across these three documents, which were documents that the technicians had that were given to the technicians so they would know how to install things like the splitter cabinet in particular, because it tells how things are wired up. Those documents were left lying around. Some of the technicians still had them. One of them was just left lying on top of a router. I picked it up, and I looked at it, and I brought them back to my desk, and when I started looking at it, I looked at it more, and I looked at it more, and finally it dawned on me sort of all at once, and I almost fell out of my chair, because this showed, first of all, what they had done, that they had taken working circuits, which had nothing to do with a splitter cabinet, and they had taken in particular what are called peering links which connect AT&T's network with the other networks.

It's how you get the Internet, right? One network connects with another. So they took 16 high-speed peering links which go to places like Qwest [Communications] and Palo Alto Internet Exchange [PAIX] and places like that. ... These circuits were working at one point, and the documents indicated in February 2003 they had cut into these circuits so that they could insert the splitter so that they can get the data flow from these circuits to go to the secret room. So this data flow meant that they were getting not only AT&T customers' data flow; they were getting everybody else's data flow, whoever else might happen to be communicating into the AT&T network from other networks. So it was turning out to be like a large chunk of the network, of the Internet

(PBS, 2007).

When confronted in a December 19, 2005 press conference about such practices, President Bush reasserted that as Commander and Chief he has the "Constitutional responsibility and Constitutional authority" to use such actions to ensure national security (Press Conference, 2005). Such a declaration is consistent with the assertions of a unitary executive and represents that executive power has been asserted to an Orwellian level in which an individual's navigation of the

information super highway can be tracked. The question is whether such practices violate a citizen's individual right to privacy. However, since no citizen has been able to have their case heard before the court system, because of the classified nature of the evidence, this practice could be sustained for the foreseeable future.

CONCLUSION

September 11, 2001 acted as a catalyst for the expansion of executive power. George W. Bush's presidency reflects his personal influence on the office and transformed the branch from one of three branches of government to a single unitary executive in charge and control of all issues pertaining to national security matters. This forceful position has allowed the executive branch to exert highly controversial policies in the secret cloak of national security (United States GAO, 2007).

The practice of signing statements has effectively forced the United States Congress into a position of unforeseen weakness. The only power of the Congress is to pretty much yell and scream at the top of their lungs until the White House agrees to stop the practice of simply ignoring Congressional intent. Simultaneously, the United States has detained enemy combatants on a foreign U.S. territory, being held without charges and physically coerced during interrogations without the knowledge of what is happening. Let's remember that these are, again, suspected terrorists. Habeas corpus has been suspended for suspected terrorists in the name of fear. The accused have no opportunity to address their confinement in Guantanamo Bay or aboard one of the rendition planes. Now, there is a systematic process of collecting intelligence of American citizens' telephone lines and internet connections. All reflect a growing and calculated effort to establish the executive branch as the primary agent of the United States' national security apparatus.

Ten years ago, the dramatic expansion of the executive branch's power would not have been tolerated by the citizens of the United States of America, Congress, or the Judiciary. The definition of terrorism is to commit a violent act in hopes of driving fear into your enemies (Hoffman, 2006). The expansion of executive power reflects the fruition of this fear. President Bush's personification of the executive branch, coupled with a Congress and Judiciary that have abandoned their responsibilities to rein in the President and other external forces, have dramatically elevated the Office of the President and the federal bureaucracy. The central tenet that started this process was fear and it continues to be fear that drives President George W. Bush and the executive branch to broaden their powers in the realm of national security.

This development has been detrimental; it has usurped traditional sources of stability in the United States government by placing a single power at the center of national security policy. The implications are astounding. The practice associated with this new Imperial Presidency places the

national security apparatus in a precarious position. President Bush's approach to the office has been hostile to the United States Constitutional structure that outlines three distinct branches of government. President Bush has systematically tipped the scales in favor of the Executive branch, to the detriment of Congress, the Supreme Court and the American people.

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