

## Reining In an Out-of-Control Executive

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Our Founding Fathers created three separate but co-equal branches of government to check and balance each other so no one branch would become all powerful. Indeed, James Madison wrote in the Federalist Papers, "The preservation of liberty requires that the three great departments of power should be separate and distinct." Madison warned, "The accumulation of all powers, legislative, executive, and judiciary in the same hands ... may justly be pronounced the very definition of tyranny." The American colonists were reacting against a police state.

More than 200 years later, we have another King George.



In the last six years, George W. Bush has sought to accumulate all governing powers in the same hands – his. In the Declaration of Independence, the framers charged that the King “refused his Assent to Laws, the most wholesome and necessary for the public good.” Bush has repeatedly violated the Constitution’s command that the President “shall take Care that the Laws be faithfully executed,” by breaking some and refusing to enforce others. The Constitution grants Congress the power to make laws; after both houses pass a bill, the President can only sign it or veto it. Bush, however, takes a different tack. He has vetoed just three bills, then quietly attached “signing statements” to more than 1,000

congressional laws, indicating his intent to follow only those parts with which he agrees.

In an end run around Congress and the courts, Bush secretly authorized the Terrorist Surveillance Program to conduct electronic surveillance without a judicial warrant, in violation of the Foreign Intelligence Surveillance Act (FISA) and the Fourth Amendment. Although two judges on a three-judge panel of the Sixth Circuit Court of Appeals ordered the dismissal of a lawsuit challenging the legality of Bush's spying program for lack of standing, the only two judges ever to rule on the merits declared the program illegal.

The Bush administration lied to Congress to get authority to invade Iraq . Long before the 9/11 terrorist attacks, Bush and his officials were planning to attack Iraq and change its regime. Dick Cheney's secret energy task force drew up maps of Iraq 's oil fields to divvy up the black gold once we occupied that country. They then devised an elaborate scheme to convince the American people that Saddam Hussein posed a threat to the United States , notwithstanding overwhelming intelligence to the contrary. Since Bush launched "Operation Iraq Freedom," more than 3,600 American soldiers and tens of thousands of innocent Iraqis have died; many thousands more have been wounded. This invasion is a war of aggression, which violates the UN Charter, because it was neither executed in self-defense nor approved by the Security Council.

During the war, U.S. troops have been acting under rules of engagement – free-fire zones – that have led some to commit war crimes. For instance, the killing, execution-style, of 24 civilians in the Haditha Massacre, the execution of a disabled man, and the shooting of a wounded unarmed Iraqi in a mosque violate the Geneva Conventions which prohibit willful killing of civilians. Commanders, all the way up the chain to the commander-in-chief, could be convicted of war crimes if they should've known their subordinates would commit them and the commanders didn't stop or prevent it.

Bush's legal eagles, particularly David Addington and John Yoo, concocted elaborate "legal" arguments to justify the torture of prisoners. Never mind that international and American law forbid torture under all circumstances. Pursuant to a common plan to violate the Geneva Conventions and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, prisoners in U.S. custody are being tortured and abused. Prisoners have been subjected to water-boarding, attacks by dogs, sexual humiliation, and excruciatingly painful force-feeding.

The Bush administration has secretly rendered prisoners to other countries to be tortured. One former CIA agent observed, "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 ."

Shortly after 9/11, the Bush gang set up a prison camp in Guantánamo, intending to create a legal black hole where they could hold prisoners for the rest of their lives without any judicial oversight. But the Supreme Court didn't buy the administration's argument that U.S. courts have no jurisdiction over Guantánamo because it's in Cuba . And the Court struck down Bush's original military commissions since they violated the Uniform Code of Military Justice and the Geneva Conventions.

The Supreme Court said in *Berger v. United States* that a prosecutor's job is to see that justice is done, not to politicize justice. But Bush's Department of Justice, the chief law

enforcement agency in the government, has been seriously compromised. Several U.S. attorneys who refused to bring frivolous charges that would further Bush's political agenda, or who brought charges that didn't, were purged.

The White House is resisting congressional subpoenas that call for testimonial and documentary evidence about the U.S. attorney firing scandal. The deadline for Bush, Cheney and the Justice Department to produce documents in response to Senate Judiciary Committee subpoenas about the warrantless surveillance is July 18. In 1974, when the House Judiciary Committee passed three articles of impeachment against Richard Nixon, Article III charged refusal to comply with subpoenas during the Watergate hearings.

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