

# US Election Campaign: Silence on War Crimes

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Global Research, November 04, 2008

[The Freedom Future Foundation](#) 4  
November 2008

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Last week, Bill Kovach, former Washington Bureau Chief of the *New York Times* and the founding chairman of the Committee of Concerned Journalists, blasted the U.S. media for its failure to ask tough questions of both presidential candidates regarding their opinions of the Bush administration's unprecedented adherence to the controversial "unitary executive theory" of government.

The theory, which became prominent in the Reagan administration, but has peppered U.S. history, contends that, when he wishes, the president is entitled to act unilaterally, without interference from Congress or the judiciary. This is in direct contravention of the separation of powers on which the United States was founded, and critics have long contended that it is nothing less than an attempt by the executive to seize the dictatorial powers that the Constitution was designed to prevent.

Under the cover of the wartime powers granted in the wake of the 9/11 attacks, and with encouragement from lawyers including, in particular, Vice President Dick Cheney's chief of staff (and former legal counsel) David Addington, President Bush has pursued the theory relentlessly, issuing a record number of "signing statements" to laws passed by Congress, designed to prevent the nation's politicians from interfering in the executive's quest for unchecked power.

He has also approved a number of secret memos, which, in conjunction with various "signing statements," have authorized what numerous critics of the administration regard as war crimes. These include detaining prisoners seized in the "war on terror" as "illegal enemy combatants" and holding them without charge or trial, dismissing the protections of the Geneva Conventions, redefining torture and approving its use by the U.S. military and the CIA, and authorizing "extraordinary rendition" and the use of secret prisons.

As if to prove what he was saying, Bill Kovach's speech to a meeting of international journalists in Washington, D.C., went unreported in the U.S. media (and I located it only on the [website](#) of a Jamaican newspaper). And yet in many ways Kovach could have gone further, and could also have asked why the presidential candidates themselves have been silent about the current administration's crimes.

The answer, sadly, is that the executive's thirst for unfettered executive power is not a priority for voters, even when it spills out of foreign wars and offshore prisons and onto the U.S. mainland. Too many Americans, it seems, are unconcerned or unaware that the president can even hold U.S. citizens and legal residents as "enemy combatants" and can imprison them indefinitely on the U.S. mainland without charge or trial, as the cases of [Jose](#)

[Padilla and Ali al-Marri reveal in horrific detail.](#)

As a result, gross abuses of power in the name of the “war on terror,” and the dictatorial theory that underpins them, have largely been ignored on the campaign trail.

Over the past two years, Senator Barack Obama repeatedly declared his support for habeas corpus, a cornerstone of American law, inherited from the English, which prohibits arbitrary imprisonment and grants all prisoners the right to know why they are being held. He [defended](#) habeas corpus while resisting the Military Commissions Act of 2006, a poisonous piece of legislation, which not only stripped the Guantánamo prisoners of their habeas rights, but also reinforced the president’s right to seize and detain indefinitely anyone he regarded as an “illegal enemy combatant,” and attempted to grant immunity to the president and his minions for any actions that might one day be regarded as war crimes.

Senator Obama has also stated that he will “reject torture without exception,” and last August [delivered](#) a speech in which, touching on all the administration’s law-shredding excesses, he declared,

As President, I will close Guantánamo, reject the Military Commissions Act, and adhere to the Geneva Conventions. Our Constitution and our Uniform Code of Military Justice provide a framework for dealing with the terrorists ... The separation of powers works. Our Constitution works. We will again set an example to the world that the law is not subject to the whims of stubborn rulers, and that justice is not arbitrary.

In June this year, when the Supreme Court (which had granted the Guantánamo prisoners statutory habeas corpus rights in June 2004) rejected the habeas-stripping provisions of the Military Commissions Act and its predecessor, the Detainee Treatment Act of 2005, and [ruled](#) that the prisoners’ habeas corpus rights were constitutional, Senator Obama was swift to congratulate the justices, [calling](#) the ruling “an important step toward reestablishing our credibility as a nation committed to the rule of law, and rejecting a false choice between fighting terrorism and respecting habeas corpus.”

Since then, however, the Obama campaign has gone silent on executive power and the administration’s war crimes, and Senator Obama has only spoken out publicly on one occasion in September, in response to an assertion by Sarah Palin, at the Republican conference, that “Al-Qaeda terrorists still plot to inflict catastrophic harm on America and he’s worried that someone won’t read them their rights.”

Senator Obama [responded](#) by telling supporters in Michigan that habeas corpus was “the foundation of Anglo-American law,” which “says very simply: If the government grabs you, then you have the right to at least ask, ‘Why was I grabbed?’ And say, ‘Maybe you’ve got the wrong person.’” He explained that it was an essential safeguard, “because we don’t always have the right person. We may think it’s Mohammed the terrorist, but it might be Mohammed the cab driver. You might think it’s Barack the bomb-thrower, but it might be Barack the guy running for president.” His conclusion drove the argument back to where it should have been, but it has sadly not been repeated since: “Don’t mock the Constitution. Don’t make fun of it. Don’t suggest that it’s not American to abide by what the founding fathers set up. It’s worked pretty well for over 200 years.”

Another reason for disappointment is that, by refusing to raise these issues, Senator Obama has allowed John McCain to comfortably maintain the Republicans' "traditional" role as protectors of national security, without having the basis of that assumption challenged, and has also failed to exploit Senator McCain's shameful hypocrisy, as he has drifted to the right to appeal to the Republican base.

Even before the campaign became all-consuming, Senator McCain (an outspoken opponent of torture, as the result of his own experiences in Vietnam) had a spotty record on the abuse of executive power — and even on the prevention of torture by U.S. forces. Although he attempted to introduce a ban on torture by all U.S. personnel in the Detainee Treatment Act, he allowed himself to be bullied by Dick Cheney into excluding the CIA from the act's provisions, and the following year he willingly endorsed the Military Commissions Act.

This year, however, Senator McCain's flight from his own convictions has accelerated alarmingly. In February, he conveniently [shelved](#) his lifelong opposition to torture by voting against a bill banning the use of torture by the CIA, and after the Supreme Court's habeas ruling in June, he [declared](#) that it was "one of the worst decisions in the history of this country," even though, in 2005, he had told NBC's [Meet the Press](#) that the problem with Guantánamo was that the prisoners continued to be held without "any adjudication of their cases."

However, the main reasons for being disappointed that the crimes of a rogue administration have barely been mentioned as the election approaches are these: firstly, that I can only wonder, in spite of Senator Obama's fine words, whether the Democrats in general, who famously ruled [impeachment](#) "off the table" when they gained a political majority two years ago, would in fact be unwilling to cede power if it was theirs to wield; and secondly (and most significantly), because it allows those responsible for the long list of egregious crimes that have soiled America's name to leave office unchallenged. Donald Rumsfeld may be long gone, and George W. Bush nothing more than a shadow, but in the office of the vice president, Dick Cheney and David Addington, the architects of this unprecedented assault on the Constitution, the Bill of Rights, the UN Convention Against Torture, the War Crimes Act and the Geneva Conventions have been allowed to maintain their dangerous delusions, nurtured through decades of support for executive overreach in the administrations of Richard Nixon, Ronald Reagan, and George H. W. Bush.

As law professor Scott Horton explained to the [New Yorker](#)'s Jane Mayer for an in-depth analysis of Addington in 2006, the mission of the vice president's closest adviser "and a small group of administration lawyers who share his views" has been to "overturn two centuries of jurisprudence defining the limits of the executive branch. They've made war a matter of dictatorial power."

In conclusion, then, I can only note that it's a sad indictment of a country's state of mind when the ruling administration has been devoted to dictatorial powers and war crimes, but an election campaign comes and goes as though it had never happened.

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