

January 7, 2007

EDITORIAL

The Imperial Presidency 2.0

Observing President Bush in action lately, we have to wonder if he actually watched the election returns in November, or if he was just rerunning the 2002 vote on his TiVo.

That year, the White House used the fear of terrorism to scare American voters into cementing the Republican domination of Congress. Mr. Bush and Vice President Dick Cheney then embarked on an expansion of presidential power chilling both in its sweep and in the damage it did to the constitutional system of checks and balances.

In 2006, the voters sent Mr. Bush a powerful message that it was time to rein in his imperial ambitions. But we have yet to see any sign that Mr. Bush understands that — or even realizes that the Democrats are now in control of the Congress. Indeed, he seems to have interpreted his party's drubbing as a mandate to keep pursuing his fantasy of victory in Iraq and to press ahead undaunted with his assault on civil liberties and the judicial system. Just before the Christmas break, the Justice Department served notice to Senator Patrick Leahy — the new chairman of the Judiciary Committee — that it intended to keep stonewalling Congressional inquiries into Mr. Bush's inhumane and unconstitutional treatment of prisoners taken in anti-terrorist campaigns. It refused to hand over two documents, including one in which Mr. Bush authorized the Central Intelligence Agency to establish secret prisons beyond the reach of American law or international treaties. The other set forth the interrogation methods authorized in these prisons — which we now know ranged from abuse to outright torture.

Also last month, Mr. Bush issued another of his infamous "presidential signing statements," which he has used scores of times to make clear he does not intend to respect the requirements of a particular law — in this case a little-noticed Postal Service bill. The statement suggested that Mr. Bush does not believe the government must obtain a court order before opening Americans' first-class mail. It said the administration had the right to "conduct searches in exigent circumstances," which include not only protecting lives, but also unspecified "foreign intelligence collection."

The law is clear on this. A warrant is required to open Americans' mail under a statute that was passed to stop just this sort of abuse using just this sort of pretext. But then again, the law is also clear on the need to obtain a warrant before intercepting Americans' telephone calls and e-mail. Mr. Bush began openly defying that law after Sept. 11, 2001, authorizing the National Security Agency to eavesdrop without a court order on calls and e-mail between the United States and other countries.

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News accounts have also reminded us of the shameful state of American military prisons, where supposed terrorist suspects are kept without respect for civil or human rights, and on the basis of evidence so deeply tainted by abuse, hearsay or secrecy that it is essentially worthless.

Deborah Sontag wrote in The Times last week about the sorry excuse for a criminal case that the administration whipped up against Jose Padilla, who was once — but no longer is — accused of plotting to explode a radioactive “dirty bomb” in the United States. Mr. Padilla was held for two years without charges or access to a lawyer. Then, to avoid having the Supreme Court review Mr. Bush’s power grab, the administration dropped those accusations and charged Mr. Padilla in a criminal court on hazy counts of lending financial support to terrorists.

But just as the government abandoned the “dirty bomb” case against Mr. Padilla, it quietly charged an Ethiopian-born man, Binyam Mohamed, with conspiring with Mr. Padilla to commit that very crime. Unlike Mr. Padilla, Mr. Mohamed is not a United States citizen, so the administration threw him into Guantánamo. Now 28, he is still being held there as an “illegal enemy combatant” under the anti-constitutional military tribunals act that was rushed through the Republican-controlled Congress just before last November’s elections.

Mr. Mohamed was a target of another favorite Bush administration practice: “extraordinary rendition,” in which foreign citizens are snatched off the streets of their hometowns and secretly shipped to countries where they can be abused and tortured on behalf of the American government. Mr. Mohamed — whose name appears nowhere in either of the cases against Mr. Padilla — has said he was tortured in Morocco until he signed a confession that he conspired with Mr. Padilla. The Bush administration clearly has no intention of answering that claim, and plans to keep Mr. Mohamed in extralegal detention indefinitely.

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The Democratic majority in Congress has a moral responsibility to address all these issues: fixing the profound flaws in the military tribunals act, restoring the rule of law over Mr. Bush’s rogue intelligence operations and restoring the balance of powers between Congress and the executive branch. So far, key Democrats, including Mr. Leahy and Senator Richard Durbin of Illinois, chairman of a new subcommittee on human rights, have said these issues are high priorities for them.

We would lend such efforts our enthusiastic backing and hope Mr. Leahy, Mr. Durbin and other Democratic leaders are not swayed by the absurd notion circulating in Washington that the Democrats should now “look ahead” rather than use their new majority to right the dangerous wrongs of the last six years of Mr. Bush’s one-party rule.

This is a false choice. Dealing with these issues is not about the past. The administration’s assault on some of the nation’s founding principles continues unabated. If the Democrats were to shirk their responsibility to stop it, that would make them no better than the Republicans who formed and enabled these policies in the first place.

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