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The Imperial Presidency at Work

Editorial
New York Times
January 15, 2006

You would think that Senators Carl Levin and John McCain would have learned by now that you cannot deal in good faith with a White House that does not act in good faith. Yet both men struck bargains intended to restore the rule of law to American prison camps. And President Bush tossed them aside at the first opportunity.

Mr. Bush made a grand show of inviting Mr. McCain into the Oval Office last month to announce his support for a bill to require humane treatment of detainees at Guantánamo Bay and other prisons run by the American military and intelligence agencies. He seemed to have managed to get Vice President Dick Cheney to stop trying to kill the proposed Congressional ban on torture of prisoners.

The White House also endorsed a bargain between Mr. Levin and Senator Lindsey Graham of South Carolina, which tempered somewhat a noxious proposal by Mr. Graham to deny a court hearing to anyone the president declares to be an "unlawful enemy combatant." The bargain with Mr. Levin removed language that stripped away cases already before the courts, which would have been an egregious usurpation of power by one branch of government, and it made clear that those cases should remain in the courts.

Mr. Bush, however, seems to see no limit to his imperial presidency. First, he issued a constitutionally ludicrous "signing statement" on the McCain bill. The message: Whatever Congress intended the law to say, he intended to ignore it on the pretext the commander in chief is above the law. That twisted reasoning is what led to the legalized torture policies, not to mention the domestic spying program.

Then Mr. Bush went after the judiciary, scrapping the Levin-Graham bargain. The solicitor general informed the Supreme Court last week that it no longer had jurisdiction over detainee cases. It said the court should drop an existing case in which a Yemeni national is challenging the military tribunals invented by Mr. Bush's morally challenged lawyers after 9/11. The administration is seeking to eliminate all other lawsuits filed by some of the approximately 500 men at Gitmo, the vast majority of whom have not been shown to pose any threat.

Both of the offensive theories at work here - that a president's intent in signing a bill trumps the intent of Congress in writing it, and that a president can claim power without restriction or supervision by the courts or Congress - are pet theories of Judge Samuel Alito, the man Mr. Bush chose to tilt the Supreme Court to the right.

The administration's behavior shows how high and immediate the stakes are in the Alito nomination, and how urgent it is for Congress to curtail Mr. Bush's expansion of power. Nothing in the national consensus to combat terrorism after 9/11 envisioned the unilateral rewriting of more than 200 years of tradition and law by one president embarked on an ideological crusade.