Mr. Speaker, it is my distinct pleasure to honor Mr. Christensen and his achievements here today, and wish him all the best in his future endeavors.

THE CASE OF VALERIU PASAT

HON. CHRISTOPHER H. SMITH
OF NEW JERSEY
IN THE HOUSE OF REPRESENTATIVES

Thursday, June 29, 2006

Mr. SMITH of New Jersey. Mr. Speaker, following the collapse of the Soviet Union when there were virtual open-air arms bazaars taking place across the territory of the former USSR, the United States Government purchased twenty-one fighter aircraft from the newly independent Republic of Moldova. The Moldovan official who negotiated this sale was then Defense Minister, Valeriu Pasat. This purchase was intended to keep these aircraft out of the hands of potentially hostile regimes. Just last year, Mr. Pasat was charged with malfeasance in connection with this transaction that occurred nearly a decade ago. Allegedly, the planes were worth more than the Moldovan Government received for them in the deal approved by Chisinau. In January of this year, Pasat was convicted by a tribunal and received a 10-year labor camp sentence. His sentence is now awaiting appeal. Mr. Pasat maintains that the charges against him are political and linked to his work with those who oppose Moldova against him are political and linked to his work with those who oppose Moldova against him.

In last winter’s New York Review of Books, Elizabeth Drew, one of our most distinguished political analysts, discusses President Bush’s “Power Grab.” She forcefully reminds us that, to paraphrase Franklin, the Constitution gives Congress power co-equal with the President, but only if Congress can keep it. Drew illustrates in painful but accurate detail how Congress repeatedly has stood by and allowed Bush to erode our constitutional powers, one bit at a time.

Drew’s particular focus on President Bush’s drastically increased use of so-called “signing statements,” in which he asserts a statute’s version he plans to follow, his own version. President Bush tries to claim the power to “make all laws,” as well as his constitutionally assigned role to ensure the “laws be faithfully executed.” He did not originate the practice, but his use of it is unprecedented in frequency, scope, and defiance of clear legislative intent. This is not a partisan issue. When President Bush reluctantly signed the recent statute banning torture, but then insisted that he would authorize non-existent exemptions members of both parties disputed the practice.

As Drew explains, Bush’s claim of “inherent authority” to ignore the laws knows no bounds, no time frame or limiting principle. The genius of our system of government is its separation of powers and its structure of checks and balances. That structure is at risk today. I urge my colleagues to ponder Elizabeth Drew’s timely warning.

From the New York Review of Books, June 22, 2006

(Power Grab

By Elizabeth Drew

During the presidency of George W. Bush, the White House has made an unprecedented reach for power. It has systematically attempted to defy, control, or threaten the institutions that could challenge Congress, the courts, and the press. It has attempted to upset the balance of power among the three branches of government provided for in the Constitution; but its most aggressive and consistent assaults have been against the legislative branch: Bush has time and again said that he feels free to carry out a law as he sees fit, not as Congress wrote it. Through secrecy and contemptuous treatment of Congress, the Bush White House has made the executive branch less accountable than at any time in modern American history. And because of the complaisance of Congress, it has largely succeeded in its efforts.

This power grab has received little attention because it has been largely in obscurity. The press took little notice until Bush, on January 5 of this year, after signing a bill containing the McCain amendment, which would have ended torture, wrote a signing statement, a “signing statement,” that he would inter-
The President could of course veto a bill he doesn’t like and publicly argue his objections to it. He would then run the risk that Congress would override his veto. Instead, Bush has since a number of times asserted that he can do so by means other than the use of the pocket veto. "Under the Constitution if the president doesn’t like a bill he vetoes it. You don’t cherry-pick it," Bush said.

Bush has cited two grounds for flouting the will of Congress, or of unilaterally expanding presidential powers. One is the claim of the ‘‘inherent’’ power of the commander in chief.

Second is a heretofore obscure doctrine called the unitary executive, which gives the president power over Congress and the courts. It is an implied power that holds that the executive branch can override the courts and Congress on the basis of the president’s own interpretations of the Constitution. The Supreme Court decision in Marbury v. Madison (1853), which established the principle of judicial review, and the constitutional balance of power was premised on this theory of the unitary executive as no more than a convenient fig leaf for enlarging presidential power.

Bush’s notion of extraordinary power as commander in chief has been mainly invoked since September 11, 2001. He was able to exploit the anxieties the attacks had stirred, causing people to look to the President to defend them. Senator Jack Reed, Democrat of Rhode Island, recalled that everyone ‘‘looked to the presidency, not to the Congress, to provide them with a sense of protection’’ and put them from a further crippling attack and suspended their mistrust of government. So they [the administration] took great power, which has to be handled wisely, but they didn’t.

It is under the authority of his powers as commander in chief that the President has the right to keep nearly five hundred ‘‘enemy combatants’’ in detention in Guantanamo, of whom only ten were charged with a crime. Most were handed over by Afghan bounty hunters who were paid by the U.S. to turn in Arabs. Bush has also asserted the same authority in dealing with numerous bills passed by Congress containing language in his treatment of the McCain amendment banning ‘‘cruel, inhuman or degraded treatment’’ of POWs. In his signing statement, Bush said: ‘‘The executive branch shall construe [the torture provision] in a manner consistent with the constitutional authority of the President to supervise the unitary executive branch and as Commander in Chief and consistent with the constitutional limitations on the judiciary * * * ‘’

This general formula had by then become a staple of Bush’s signing statements, though few noticed. What Bush said about the torture bill was particularly egregious since Vice President Cheney, Bush’s liaison with Congress, had co-sponsored the law. After the Senate a provision watering down McCain’s amendment, and failed. The Senate passed it by a vote of 90 to 9, and the House endorsed it by a vote of 388 to 122. It had been an open, well-publicized fight and the President lost.

In the February, shortly after Bush’s signing statement on the McCain amendment, the Constitution Project, a bipartisan, non-profit organization in Washington, issued a report saying that high officials of both parties, prominent conservatives, and scholars, saying that they ‘‘are deeply concerned about the risk of permanent and unchecked presidential power, and the accompanying failure of Congress to exercise its responsibility as a separate and independent branch of government.’’ They objected to Bush’s assertions that he might not be bound by statutes enacted by Congress, such as the McCain amendment, and that he can ignore ‘‘long-standing treaty commitments or prohibitions that exhibit it torture of prisoners.’’ It concluded that ‘‘we agree that we face a constitutional crisis.’’

Another egregious use of the signing statement power occurred in March that, in interpreting the bill reauthorizing the Patriot Act, he would ignore the requirement that the president report to Congress on the steps taken to implement the law, thus denying that the executive should be accountable to Congress. Patrick Leahy, the Vermont Democrat on the Judiciary Committee, issued an angry protest calling Bush’s use of signing statements ‘‘nothing short of a radical effort to re-shape the constitution itself’’ and ‘‘to evade accountability and responsibility for following the law.’’ Leahy added, ‘‘The President’s signing statements are not the law, and Congress should not allow them to become the last word.’’

Bush went on to further his extraordinary powers as commander in chief, or of unilaterally expanding presidential powers. In this case, the nominal cause was to save the life of the ‘‘American’’ in the United States who was turned down. One problem with the President’s claims of extraordinary powers as commander in chief is that the ‘‘war on terror’’ is by definition ‘‘unconventional’’ and as such the president’s powers, as Bush interprets them, to do virtually whatever he wants in order to conduct that war. There are undefined limits on how far the legislature can go in instructing the president on how to conduct a war; clearly it cannot tell him how to deploy combat troops. But during the Vietnam War, Congress used the power of the purse, voting to cut off funds. The Nixon administration didn’t argue that Congress had no power to do so.

There is no way of knowing how many other laws already on the books are being re-interpreted by Bush, as he’s done in the case of the NSA wiretapping program. The Foreign Intelligence Surveillance Act, FISA, a law that passed in 1978 after the Supreme Court had unanimously rejected as illegal Richard Nixon’s domestic wiretapping, set forth what it said were the ‘‘exclusive means’’ by which an administration could conduct surveillance on Americans. The FISA law set up a special, secret court that could grant the government permission to wiretap American citizens after a showing of probable cause. One of the administration’s justifications for initiating wiretapping under the FISA law is that taps on potential terrorists must be initiated speedily; but the FISA law gives the executive three days to conduct a wiretap on a domestic on an emergency basis, and fifteen days if there’s been a declaration of war. Gonzales complains that the law is too burdensome, since the attorney general still has to set up the emergency judge and that they have to meet FISA standards. (A Republican senator, upon being told these complaints, said, ‘‘So what’s the problem?’’)

But the example of the FISA wiretapping program shows that the theory of the unitary executive appears to violate the Fourth Amendment’s
guarantee that “the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no war- rant shall issue, but upon probable cause, supported by a sworn affidavit, particularly describing the place to be searched, and the persons or things to be seized.” The original impetus for the Bush pro- gram reportedly came from General Michael V. Hayden, then head of the National Security Agency, who made the unprecedented disclosure that he wanted to oversee, the intelligence community was not supposed to oversee, the intelligence committee was not supposed to oversee, the White House-imposed arrangement was that the National Security Agency, which collects information in the United States, would be responsible for all “signals intelligence,” defined as listening to communications. Someone in the U.S. initiated the conversation, the government, which could already tap the suspected terrorist, can now tap the U.S. phone. This raised the question whether that U.S. citizen’s other calls would be taped.

In a press briefing given at the White House by Gonzales and Hayden on January 19 this year, Gonzales emphasized that “one party to the communication has to be out- side the United States” and insisted there has to be “a reasonable basis” for concluding that one party to the communication is af- filiated with or “supportive of” al-Qaeda, an extreme standard. And the NSA is now making that decision, not the FISA court. Gonzales, moreover, has told congressional committees that he couldn’t rule out that a resident or visitor in the United States could be a member of al-Qaeda, tap the suspect’s emails, and have the emails traced to the U.S. phone. Asked why the administration didn’t go to Congress for authorization to wiretap domestic calls in terrorism cases without seeking a warrant, Gonzales replied: “We have had discussions with Congress in the past—certain members of Congress—as to whether or not FISA could be used to deal with this kind of threat, and we were advised that that would be difficult, if not impossible.” In other words, having been told that Congress was unlikely to authorize the warrantless wiretaps of domestic calls, the administration went ahead and did the tapping.

The Bush administration’s reaction to the revelations about the wiretapping program has been to attack the leaks. In his state- ment acknowledging the wiretapping pro- gram, President Bush made the fact that this program is helping the emperor.” In an attempt to limit congressional over- sight, the administration tried to restrict the number of members of the House of Representatives who might be briefed about the program. As the unprecedented secrecy with which the Bush administration was handling the wiretapping program unless the full committee was briefed on it. In early March, on the eve of a scheduled vote on the matter, Republicans, including Snowe, sharply criticized Cheney for the administration’s at- tempt to prevent other committee members from being briefed about the program. Cheney had to report to the White House that its plan to shut out all but the top committee members was no longer feasible. But, working with Pat Roberts, chairman of the Intelligence Committee, and Senate Majority Leader Bill Frist, the administration was able to limit the additional commit- tee members to be briefed to four Repub- licans and two Democrats—leaving out most of the intelligence committee mem- bers, not to mention other elected officials, in the dark. On the eve of Hayden’s con- firmation hearings, Roberts, facing a public revolt by committee members of both par- ties, agreed that all of the committee mem- bers should be briefed on the surveillance programs—inventories—in the hands of U.S. security officials who hadn’t been briefed from asking awkward questions in public. (This led to the tepid questioning of Hayden in his public confirmation hearings.) Despite the briefing, in the public hearing Snowe said, “The Congress was never really consulted or informed in the manner that we could truly perform our oversight role as co-equal branches of government, not to men- tion—I happen to believe—required by law.” In March, after the Senate Intelligence Committee went public on the matter, Arlen Specter, Republican of Penn- sylvania, convened four days of hearings be- fore the Judiciary Committee. But Specter was too conspicuous by his absence. He was too vague to be informative. In late April he threatened to cut off NSA funds for the wire- tapping program if the administration didn’t reveal more about it. Asked by a reporter why he didn’t call Gonzales back to appear before his committee, Specter replied, “Because the President, or the admin- istration, apparently on the orders of the White House, shut down a Justice Depart- ment investigation into the wiretapping pro- gram.”

Bush’s nomination of Hayden to be the next CIA director set off an undoubtedly greater clamor than the White House ex- pected over his role in the wiretapping pro- gram and his strenuous public defense of it, but the White House claimed it welcomed the fight. And then another clamor was set off by the Times reporting Addington, formerly his counsel, are under- exergetic Power House has bent the supposedly independent regulatory agencies (the EPA, SEC, FDA, etc.) closer to the political views—indeed, the political in- tention—than any president before him. The explicit rationale for these agencies is that they were to be independent of both the ex- ecutive and Congress. There have already been two federal court rulings charging the EPA with defying federal environmental law. As for the press, Justice Department offi- cials have threatened to prosecute not only officials who leak classified information, but also anyone else who simply receives classi- fied information, whether they disclose it or not. And Bush has also said journalists who might be prosecuted for disclosing classified information (for example, The New York Times reporters for revealing the surveillance program), May 16, 2004, The Times of London, May 16, 2004, ABC News reported on its Web site that the F.B.I. had stopped up government efforts to seek reporters’ phone records in investiga- tions of leaks. Many reporters and editors find it ominous that the administration prosecuted two lobbyists for AIPAC, the American Israel Public Affairs Committee, for allegedly leaking such things as passing it on to Israel), and that, in early March, the F.B.I. demanded the papers of the late investigative reporter Jack Anderson. Cheney and his chief of staff, David Addington, formerly his counsel, are under- stood by most informed observers to be the main targets in any investigation of the leak of President Bush’s executive privilege or the exposure of the White House’s illegal program. After all, if the government is not telling the truth, who is? “It’s just we want it our way and we don’t want to be bothered by talking to other people about it.”
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inconvenient to the administration. It’s difficult, however, to know much about what Cheney is doing because his office operates in such secrecy that a reporter friend of mine refers to it as a “black hole.”

In Bush, Cheney has had a very receptive listener and an overweening attitude toward the presidency is clear from his behavior. He bristles at being challenged. He told me I do not need to explain why I say things. That’s the interesting thing about being the president. Maybe somebody needs to explain to me why they say something, but I don’t need to anybody an explanation. His comment, “I’m the decider,” about not firing Rumsfeld, is in fact a phrase he has used often.

Why have the members of Congress been so timorous in the face of the steady encroachment on their constitutional power by the executive branch? Conversations with many people in Congress produced the natural reason. Most members of Congress don’t think in broad constitutional terms; their chief preoccupations are raising money and getting reelected. Their conversations with their constituents are about the more practical issues on voters’ minds: the prices of gasoline, prescription drugs, and college tuition. Or about voters’ increasing discontent with the Iraq war.

Republicans know that the President’s deepening unpopularity might hurt them in the midterm election, but they act as if it’s still a good fund-raiser and they need his help. Moreover, the Republicans are more hierarchical than the Democrats, more reverent of the President’s party, so it’s unimaginable that Republicans would be as openly critical of Bush as the Democrats were of Jimmy Carter and Bill Clinton. Republican politicians have been an integral part of the team that Iwo Jima. Liz has recently decided to take a well-deserved retirement after years in selfless public service. I know that my whole staff, my constituents, and I will miss her dearly, but we wish her the very best as she takes this grand step.

Paying Tribute to Ruedy Edgington

HON. JON C. PORTER
OF NEVADA
IN THE HOUSE OF REPRESENTATIVES
Thursday, June 29, 2006

Mr. PORTER. Mr. Speaker, I rise today to honor Mr. Ruedy Edgington as he leaves the Nevada Department of Transportation (NDOT).

Ruedy has been at the NDOT for 26 years. He has accepted a position as Parson Transportation Group’s Area Manager. In his new

Tribute to Liz Coventry

HON. SCOTT GARRETT
OF NEW JERSEY
IN THE HOUSE OF REPRESENTATIVES
Thursday, June 29, 2006

Mr. GARRETT of New Jersey. Mr. Speaker, it is with a great sense of pride and with an overwhelming sense of sadness that I rise today to pay tribute to the lifelong career of public service of Liz Coventry.

Liz Family, former supporter, advisor, friend, and confidante for nearly a decade. Throughout my years in the New Jersey State Legislature and my tenure in Congress, Liz has been an integral part of the team that I depend upon and my constituents look to for assistance and guidance. There is no job too big for Liz’s breadth of expertise and knowledge—she can accomplish any task before her. And, there is no job too small for Liz—she is a true team player, pitching in whenever she can and wherever she is needed.

In her capacity on the White House staff, Liz has been a great help to countless constituents. She truly takes each individual case to heart. No one who sits with Liz at her desk ever feels like a case number; she gives each person a real personal touch.

Liz has also been organizing a number of special projects for Fifth District residents, such as the art competition and a veterans history project. Her dedication to the art competition is worthy of the art patronage of the Museum of Modern Art during the Renaissance. She makes everyone of these young artists feel like Michelangelo or Da Vinci. And, her commitment to the veterans history project is unparalleled. She is a one-woman USO, making every veteran she speaks with feel like the marines at Iwo Jima.

Liz has recently decided to take a well-deserved retirement after years in selfless public service. I know that my whole staff, my constituents, and I will miss her dearly, but we wish her the very best as she takes this grand step.