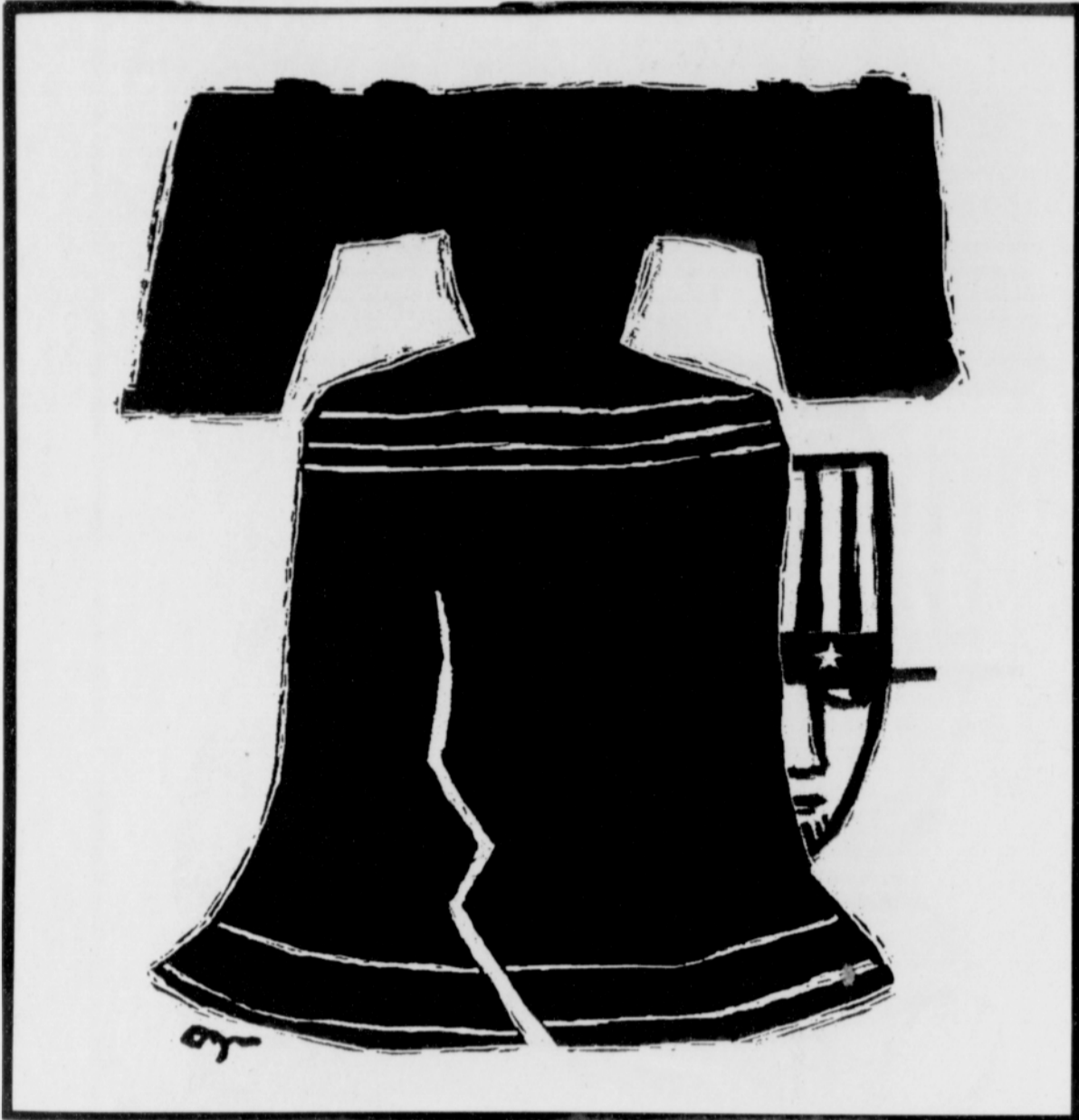


THE HIDDEN STATE STEPS FORWARD



JOHN OVERMEYER

TALKING ABOUT IMPEACHMENT

The dwindling circle of rightwing defenders of the Bush/Cheney Presidency would have Americans believe that only the most reckless partisans would even consider the prospect of censuring or perhaps even impeaching the President and Vice President. But the prospect of officially sanctioning Bush and Cheney, as has now been proposed by U.S. Representative John Conyers (Michigan), the ranking Democrat on the House Judiciary Committee, is gaining ground in unexpected quarters.

Nation magazine editor and publisher Katrina vanden Heuvel argues that, as 2005 gives way to 2006, the outrage level is rising. "The I-word," writes vanden Heuvel, "has moved from the marginal to the mainstream." *Editor & Publisher* magazine, the journal of the newspaper industry, agrees, pointing out that a "sudden outbreak of anger or candor has been sparked by the uproar over revelations of a White House-approved domestic spying program."

Indeed, the outbursts of anger and candor that once came only from the left are now coming from across the political spectrum from one of the nation's most respected academics, from a courageous former White House aide, from a conservative business journal and from a growing number of (Americans).

The academic is Jonathan Turley, the George Washington University School of Law professor who is widely recognized as one of the nation's most learned experts on civil liberties and surveillance issues. Turley says that, with his decision to have the National Security Agency secretly wiretap the phones of American citizens, the President not only "violated federal law" but raised "serious constitutional questions of high crimes and misdemeanors."

High crimes and misdemeanors are, of course, the raw material of impeachment. And Turley is not the only one speaking up about them. Former Nixon White House counsel John Dean has long argued that the President and Vice President have committed impeachable offenses that are worse than those that led to the Watergate era effort to impeach President Richard Nixon.



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What's really remarkable, and heartening, is the fact that the concerns of Turley and Dean are being echoed by some traditionally conservative voices.

Barron's, the business journal that is published by the *Wall Street Journal* and has a track record of ering on the right in most policy debates, argued in a December 24 editorial:

"Willful disregard of a law is potentially an impeachable offense. It is at least as impeachable as having a sexual escapade under the Oval Office desk and lying about it later. The members of the House Judicial Committee who staged the impeachment of President Clinton ought to be as outraged at this situation. They ought to investigate it, consider it carefully and report either a bill that would change the wiretap laws to suit the President or a bill of impeachment."

"It is important to be clear that an impeachment case, if it comes to that, would not be about wiretapping, or about a possible constitutional right not to be wiretapped. It would be about the power of Congress to set wiretapping rules by law, and it is about the obligation of the President to follow the rules in the acts that he and his predecessors signed into law."

The evidence shows that serious wrongdoing has occurred. And those responsible need to be held to account not just by academics, former White House aides and national publications but by the citizens who can persuade members of Congress to become the watchdogs on executive wrongdoing that the founders intended.

—EDITORIAL (12/30/05)
MADISON CAPITAL TIMES, WISCONSIN

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BY JONATHAN SCHELL

When the *New York Times* revealed that George W. Bush had ordered the National Security Agency to wiretap the foreign calls of American citizens without seeking court permission, as is indisputably required by the Foreign Intelligence Surveillance ACT (FISA), passed by Congress in 1978, he faced a decision. Would he deny the practice, or would he admit it? He admitted it. But instead of expressing regret, he took full ownership of the deed, stating that his order had been entirely justified, that he had in fact renewed it 30 times, that he would continue to renew it and — going even more boldly on the offensive — that those who had made his law-breaking known had committed a "shameful act." As justification, he offered two arguments, one derisory, the other deeply alarming. The derisory one was that Congress, by authorizing him to use force after September 11, had authorized him to suspend FISA, although that law is unmentioned in the resolution. Thus has Bush informed the members of a supposedly co-equal branch of government of what, unbeknownst to themselves, they were thinking when they cast their vote. The alarming argument is that as Commander-in-Chief he possesses "inherent" authority to suspend laws in wartime. But if he can suspend FISA at his whim and in secret, then what law can he not suspend? What need is there, for example, to pass or not pass the Patriot Act if any or all of its provisions can be secretly exceeded by the President?

Bush's choice marks a watershed in the evolution of his administration. Previously when it was caught engaging in disgraceful, illegal or merely mistaken or incompetent behavior, he would simply deny it: "We have found the weapons of mass destruction!" "We do not torture!" However, further developments in the torture matter revealed a shift. Even as he denied the existence of torture, he and his officials began to defend his right to order it. His Attorney General, Alberto Gonzales, refused at his confirmation hearings to state that the torture called waterboarding, in which someone is brought to the edge of drowning, was prohibited. Then when Senator John McCain sponsored a bill prohibiting cruel, inhuman and degrading treatment of prisoners, Bush threatened to veto the legislation to which it was attached. It was only in the face of majority votes in both houses against such treatment that he retreated from his claim.

But in the wiretapping matter, he has so far exhibited no such vacillation. Secret law-breaking has been supplanted by brazen law-breaking. The difference is critical. If abuses of power are kept secret, there is still the possibility that, when exposed, they will be stopped. But if they are exposed and still permitted to continue, then every remedy has failed, and the abuse is permanently ratified. In this case, what will be ratified is a presidency that has risen above the law.

The danger is not abstract or merely symbolic. Bush's abuses of presidential power are the most extensive in American history. He has launched an aggressive war ("war of choice" in today's euphemism) on false grounds. He has presided over a system of torture and sought to legitimize it by specious definitions of the word. He has asserted a wholesale right to lock up American citizens and others indefinitely without any legal showing or the right to see a lawyer or anyone else. He has kidnapped people in foreign countries and sent them to other countries, where they were tortured. In rationalizing these and other acts, his officials have laid claim to the unlimited, uncheckable and unreviewable powers he has asserted in the wiretapping case. He has tried to drop a thick shroud of secrecy over these and other actions.

There is a name for a system of government that wages aggressive war, deceives its citizens, violates their rights, abuses power and breaks the law, rejects judicial and legislative checks on itself, claims power without limit, tortures prisoners and acts in secret. It is dictatorship.

The administration of George W. Bush is not a dictatorship, but it does manifest the characteristics of one in embryonic form. Until recently, these were developing and growing in the twilight world of secrecy. Even within the executive branch itself, Bush seemed to govern outside normally constituted channels of the Cabinet and to rely on what Secretary of State Colin Powell's chief of staff has called a "cabal." Former Treasury Secretary Paul O'Neill reported the same thing. Cabinet meetings were for show. Real decisions were made elsewhere, out of sight. Another White House official, John Dilulio, has commented that there was "a complete lack of a policy apparatus" in the White House. "What you've got is everything, and I mean everything, being run by the political arm." As in many Communist states, a highly centralized party, in this case the Republican Party, was beginning to forge a parallel apparatus at the heart of government, a semi-hidden state-within-a-state, by which the real decisions were made.

With Bush's defense of his wiretapping, the hidden state has stepped into the open. The deeper challenge Bush has thrown down, therefore, is whether the country wants to embrace the new form of government he is creating by executive fiat or to continue with the old constitutional form. He is now in effect saying, "Yes, I am above the law—I am the law, which is nothing more than what I and my hired lawyers say it is — and if you don't like it, I dare you to do something about it."

Members of Congress have no choice but to accept the challenge. They did so once before, when Richard Nixon, who said, "When the President does it, it means it's not illegal," posed a similar threat to the Constitution. The only possible answer is to inform Bush forthwith that if he continues in his defiance, he will be impeached.

If Congress accepts his usurpation of its legislative power, they will be no Congress and might as well stop meeting. Either the President must uphold the laws of the United States, which are Congress's laws, or he must leave office.

Jonathan Schell is one of the United States' great journalists. His reporting from Vietnam for *New Yorker* magazine has been called the "classic reporting on the Vietnam War." His book *The Village of Ben Suc*, is perhaps his most memorable, in which a quote from an American Army Major became an indelible icon of the war and a fixture of contemporary language: "We had to destroy the village in order to save it." He is also author of *The Abolition*, *The Fate of the Earth*, and *The Time of Illusion*. He is currently *The Nation* Institute's Harold Willens Peace Fellow, and writes the magazine's "Letter From Ground Zero" column, from which this article is reprinted.