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How a Bill Becomes a Signing Statement

By David Swanson

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At the House Judiciary Committee hearings on Bush's use of signing statements on Wednesday, two exchanges at the end were quite revealing. Four hours into a hearing interrupted by several votes (thanks, Nancy!) the corporate media had all departed. Broadcast media never showed in the first place. Only a few bloggers and a bunch of citizens and staffers hung behind. Most of the Congress members had left for good.

Through most of the hearing, Deputy Assistant Attorney General John Elwood and Associate Professor of Law at Georgetown Nicholas Rosenkranz had maintained that Bush's signing statements were mere words and that Bush has obeyed to the letter each law he has signed, even if he's added a "signing statement" maintaining his right not to obey sections of that law. Elwood even claimed that if the president were to act contrary to the original law, he would notify Congress that he was doing so.

As the hearing drew to a close, Congressman Artur Davis (D-Ala.) began his questioning by pointing out that Bush's violation of the Foreign Intelligence Surveillance Act (FISA) was a case in which the media, not the Bush administration, had informed Congress of Bush's illegal activity.

Bush's spying in violation of FISA is something he has openly confessed to, engaged in for years, and continued to engage in on the basis of a signing statement following a Congressional ban. He's more recently claimed to have halted the illegal spying programs. Numerous other examples are available. The Bush administration continues to engage in torture on the basis of a signing statement reversing a law and in violation of multiple laws and the US Constitution. Bush continues to build permanent military bases in Iraq on the basis of a signing statement reversing a Congressional ban. Congress passed a bill requiring that by 2008 the Iraq War budget be part of the standard budget. Bush has already proposed an "emergency" supplemental bill for 2008, as well as the expected one for 2007.

But I digress. Davis asked whether it was Elwood's position that if the president thinks a law is unconstitutional he should not follow it?



Elwood: "Yes."

Davis then said that Alabama had a governor once who thought letting black people vote was unconstitutional. "How," Davis asked, "is that different from the president's position?"

Elwood avoided an answer.

Davis asked again.

Elwood said that governors are subject to federal law.

Davis asked whether presidents are not subject to the law as well?

Elwood said only if the Supreme Court has ruled.

Davis asked why the president's interpretive power would exceed the Congress's.

Elwood hemmed and hawed.

So, there you have a position from an official representative of the Bush administration testifying before Congress. This president believes that laws passed by Congress can be overturned by the president. Only after the Supreme Court has ruled on each point of law is the president obliged to obey and properly execute.

So, why have a Congress at all? Its sole function would seem to be the appointment and impeachment of Supreme Court justices. We should be able to at least cut back on its budget if that's all it has to do.

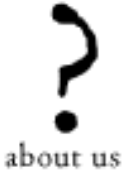
At the very end of the hearing, freshman Congressman Keith Ellison proposed eliminating something else instead of Congress. If signing statements have no legal force or have dubious force, he asked, why not get rid of them? What purpose do they serve?

Rosenkranz replied that they importantly instruct the Congress in the president's interpretation of the law.

Ellison: "Does the signing statement in any way alter the law?"

Rosenkranz: "No."

Ellison: "So why not do a press release instead?"



Rosenkranz: "You could do that. Then we'd have a hearing on press releases."

Ellison: "No, then we wouldn't worry about whether the president was following the law."

Ellison turned to Elwood and asked again: "Why do we need signing statements?"

Elwood replied that a press release would work as well.

Ellison said the president could also invite members to his office to talk about it. Ellison turned to former congressman Mickey Edwards and asked again: "Why not eliminate signing statements?"

Edwards replied that what matters is whether the president can assert the power to rewrite laws.

Every Republican member of the committee who spoke during the hearing defended Bush's use of signing statements. Edwards said he was shocked by the number of people on the committee who could not get beyond their party affiliation. "The Constitution is beyond party. I'm really disturbed by this."

David Swanson is creator of MeetWithCindy.org, co-founder of the AfterDowningStreet.org coalition, a writer and activist, and the Washington Director of Democrats.com. He is a board member of Progressive Democrats of America, and serves on the Executive Council of the Washington-Baltimore Newspaper Guild, TNG-CWA. He has worked as a newspaper reporter and as a communications director, with jobs including Press Secretary for Dennis Kucinich's 2004 presidential campaign, Media Coordinator for the International Labor Communications Association, and three years as Communications Coordinator for ACORN, the Association of Community Organizations for Reform Now. Swanson obtained a Master's degree in philosophy from the University of Virginia in 1997. His website is www.davidswanson.org.

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