

# Defying the Imperial Presidency

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The House Judiciary Committee did its duty yesterday, voting to cite Harriet Miers, the former White House counsel, and Joshua Bolten, the White House chief of staff, for contempt. The Bush administration has been acting lawlessly in refusing to hand over information that Congress needs to carry out its responsibility to oversee the executive branch and investigate its actions when needed. If the White House continues its obstruction, Congress should use all of the contempt powers at its disposal.

The committee really had no choice but to hold Ms. Miers in contempt. When she was subpoenaed to testify about the administration's possibly illegal purge of nine United States attorneys, she simply refused to show up, citing executive privilege. Invoking privilege in response to particular questions might have been warranted — the courts could have decided that later. But simply flouting a Congressional subpoena is not an option.

Mr. Bolten has refused to provide Congress with documents it requested in the attorney purge investigation, also citing privilege, and he has been equally unforthcoming about why he thinks it applies. Together, Ms. Miers's and Mr. Bolten's response to Congress has simply been: "Go away" — a position that finds no support in the Constitution.

If these privilege claims make it to court, it is likely that Ms. Miers and Mr. Bolten will lose. The Supreme Court has held that a president's interest in keeping communications private must be balanced against an investigator's need for them. In this case, the president's privacy interest is minimal, since the White House has said he was not involved in purging the United States attorneys. Congress's need for the information, though, is substantial. It has already turned up an array of acts by administration officials that may have been criminal.

The administration's contemptuous attitude toward the constitutional role of Congress was on display again this week when Attorney General Alberto Gonzales testified before the Senate Judiciary Committee. He repeatedly refused to answer legitimate questions, and he contradicted himself so frequently that it is hard to believe he was even trying to tell the truth.

Congress must not capitulate in the White House's attempt to rob it of its constitutional powers. Now that the committee has acted, the whole House must vote to hold Ms. Miers and Mr. Bolten in contempt. The administration has indicated that it is unlikely to allow the United States attorney for the District of Columbia to bring Congress's contempt charges before a grand jury. That would be a regrettable stance. But if the administration sticks to it, Congress can and should proceed against Ms. Miers and Mr. Bolten on its own, using its inherent contempt powers.

It is not too late for President Bush to spare the country the trauma, and himself the disgrace, of this particular constitutional showdown. There is a simple way out. He should direct Ms. Miers and Mr. Bolten to provide Congress with the information to which it is entitled.