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Bending so as Not to Break: What the Bush Presidency Reveals about the Politics of Unilateral Action

William G. Howell and Douglas L. Kriner

Whatever future historians may say about the George W. Bush presidency, one thing is clear: their verdict will hinge upon evaluations of the president's "war on terror" and his military campaigns in the Middle East. Though social security reform and ballooning deficits may constitute prominent policy failures, and tax cuts and educational accountability systems may rank among his victories, the security of this president's legacy ultimately depends upon democracy taking hold in the Middle East and the successful dismantling of terrorist networks both at home and abroad.

Because Bush has consciously crafted his as a wartime administration, the recent and rapid escalation of presidential power should come as little surprise, for when the nation stands on a war footing, presidential power almost always expands. Locked in a struggle of will and might against a foreign foe, with reports of advances and retreats printed daily, the president exerts influence at home like at no other time. "When the blast of war blows in our ears," Clinton Rossiter (1956, 24) reminds us, "the President's power to command the forces swells out of all proportion to his other powers." And when a perceived enemy does not so much line up in formation as lurk within shadows, when the casualties of war are as likely to be carried from a marketplace as from a battlefield, when the threat of future attacks appears imminent at home as well as abroad, the president can push the limits of his powers to the fullest by merely gesturing towards the nation's security interests.

The expansion of executive power during times of war grants presidents a full arsenal of administrative tools to forge and execute their policy objectives. Using national security directives, executive orders, proclamations, and a

wide assortment of other measures, this president has exercised extraordinary control over military actions waged against foreign regimes and the terrorists that they purportedly harbor. Bush has not hesitated to use any and all means at his disposal. In the aftermath of September 11, Bush unilaterally created a series of agencies—the Office of Homeland Security, the Office of Global Communications, and the Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction—to collect and disseminate new intelligence while coordinating the activities of existing bureaus. He issued a national security directive lifting a ban (which Ford originally instituted via executive order 11905) on the CIA's ability to "engage in, or conspire to engage in, political assassination"—in this instance, the target being Osama bin Laden and his lieutenants within al-Qaeda. He signed executive orders that froze all financial assets in US banks that could be linked to bin Laden and his terrorist networks. Bush unilaterally established special military tribunals to try noncitizens suspected of plotting terrorist acts, committing terrorism, or harboring known terrorists.¹ And through national security directives, the president has developed a massive international infrastructure to detain and interrogate (and, some charge, torture) foreign combatants.

The most visible of Bush's unilateral actions consisted of military strikes in Afghanistan and Iraq. Having secured congressional authorizations to respond to the mounting crises as he saw fit, in the fall of 2001 Bush directed the Air Force to begin a bombing campaign against Taliban strongholds, while Special Forces conducted stealth missions on the ground. In the spring of 2003, he launched a massive air and ground war against Iraq, plunging the United States into the most protracted military conflict since the Vietnam War. During the subsequent occupation, most policies related to intelligence gathering, the rebuilding of infrastructure, the training of Iraqi troops, and the governing transition came not through laws, but through unilateral actions of one sort or another. Though not packaged as traditional policy directives, these commands nonetheless instigated some of the most potent expressions of executive power. Within a year Bush's orders resulted in the collapse of the Taliban and Baathist regimes, the flight of tens of thousands of refugees into Pakistan, Iran, and Turkey, the destruction of Afghanistan's and Iraq's social and economic infrastructures, and the introduction of new democratically elected governments.

How should we evaluate these extraordinary displays of presidential power? There is, at present, a burgeoning literature on unilateral powers that lends guidance on the matter (see e.g. Cooper 2002; Deering and Maltzman 1999; Howell 2003, 2005a, b; Howell and Lewis 2002; Krause and Cohen 1997, 2000; Marshall and Pacelle 2005; Mayer 1999, 2001; Mayer and Price 2002; Moe and Howell 1999a, b; Pious 1991). The more formal and empirically minded contributors to this research have offered two core lessons about unilateral

powers. First, and perhaps foremost, presidents are able to accomplish things unilaterally that would not survive the legislative process. If their policy agenda ultimately depends upon Congress's goodwill, shared convictions, or induced preferences, presidents invite regular disappointment. But by issuing any number of unilateral directives, presidents manage to eke out a measure of discretion that they otherwise would sorely miss. The second lesson concerns how the boundaries of presidential power are defined. Unilateral power is not absolute; rather, it expands and contracts according to the variable capacity and willingness of other political actors to amend or overturn an order already given. The politics of unilateral action do not halt instantaneously the moment the president signs off on an executive order or proclamation. Should a president overextend his (someday her) unilateral authority, Congress and the courts stand poised, albeit with variable levels of determination, to reverse his actions.

During the course of the Bush presidency, even casual observers appear awestruck by the sheer amount of evidence in support of the first lesson. Indeed, this president's willingness to bypass Congress in pursuit of a sweeping set of foreign policy objectives reveals considerable aplomb, audacity even. *The Economist* (2006a) recognizes that "most presidents like to try and expand their powers. But in repeatedly invoking his constitutional authority as commander-in-chief in the 'war on terror' to bypass both domestic laws and international treaties, George Bush has taken the art to new heights." David Moberg (2006, 4) laments "the threat of an imperial presidency, which has reached its highest level under Bush." Stephen Graubard (2004, 32) notes that, "the perils of exaggerated executive power were never more conspicuous than in the first years of the twenty-first century when the king, courtiers, and warriors domiciled in Washington, D.C." And other scholars within this volume speak more eloquently still about the various constitutional, legal, and moral implications of the current administration's brash exercise of presidential power. Unequivocally, this president has gleaned considerable influence from his unilateral powers.

Evidence of the second lesson, however, appears in shorter supply—at least, as of this writing in the summer of 2006. During the past five years, Congress has done precious little legislatively to rein in the president. For the most part, Bush's policy agenda, or at least the part that has been unilaterally instituted, has not suffered grand defeats at the hand of congressionally enacted statutes or judicial rulings. Though an epic inter-branch showdown may yet erupt, thus far, conflicts have proven rather muted—even though the president, quite explicitly, has sought to exalt his own power and to denigrate Congress's, insisting on more than a few occasions that members should not, and constitutionally cannot, meddle in his campaigns against terrorism at home and abroad. Among critics, the president's defiant stance has generated a growing consensus, articulated in a recent *New York Times*

(2006a) editorial, that "the system of checks and balances is a safety net that doesn't feel particularly sturdy at present."

Two factors, in our judgment, help explain why friction between Congress and the presidency has not yielded the kinds of spark that might allay scholars' growing worries about the health of our system of separated powers. First, the Bush Administration has proven remarkably adept at measuring the level of opposition it faces within Congress and adjusting accordingly. Facing or anticipating unified and vocal objections from Capitol Hill against a unilaterally instituted policy—an admittedly rare occurrence, given the Republican majorities that reside there—Bush has not been shy about dropping its most controversial provisions. And when Congress has stood poised to enact sweeping laws that Bush himself opposes, the president has often taken the initiative himself to pre-empt Congress and unilaterally institute more moderate policy changes, thereby derailing the more extreme versions circulating in the legislature. Though resolute and ideologically committed, this administration, like so many of its predecessors, is not foolhardy.

Second, there is much that members of Congress can do short of enacting laws that formally amend or overturn especially objectionable unilateral actions taken by the president. Indeed, to focus exclusively on the dearth of legislative challenges to presidential actions is to overlook the more subtle, yet tangible, ways through which members of Congress can affect the president's strategic calculus. By holding hearings, advancing criticisms, and issuing public appeals for a change in course, members can, and have, materially raised the political costs of unilaterally creating public policy. And here again we find evidence of Bush's sensitivity to these costs. Repeatedly, Bush has taken firm stances in support of his favored foreign policy position only to backtrack later when critics assemble and object in unison. The current administration is certainly bold, but it also is highly strategic, wary of overextending its reach in a contested policy domain and suffering the political fallout. When the costs of either advancing or merely defending an especially controversial unilateral action become prohibitive, Bush often bends so as not to break.

This chapter focuses on congressional efforts to curtail the president's foreign policy over terrorism and the Middle East, almost all of which has been unilaterally instituted. With a series of case studies and new experimental survey data, we show that congressional opposition to the president systematically influences the willingness of average citizens to support the president's military campaigns abroad and, moreover, that such opposition has occasionally induced the president to back off from his preferred policies. So doing, we demonstrate that congressional checks on presidential war powers, though certainly diminished, remain a core feature of unilateral politics.

Studies in Strategic Action

When presidents unilaterally change public policy, they can accomplish things that would not survive the legislative process—and in such instances, the mark of presidential influence is plain for all to see. The fact, though, that presidents can create policy outside the legislative process does not ensure that they will secure every aspect of their policy agenda. For when Congress and the courts stand poised to amend or overturn him, or when the adjoining branches of government can raise the expected political costs of defending an especially controversial policy initiative, the president will usually back off from his preferred policy. This section presents four brief case studies that illustrate these dynamics.² In the first three, Bush conceded on key dimensions (some small, others large) of a policy initiative in order to protect gains on other dimensions; in the fourth, Bush conceded nothing at all and watched his entire policy initiative run aground.

Warrantless Wiretaps

Questions regarding the legality of and proper procedures for wiretapping and electronic surveillance have a long history in the United States. The Court first addressed the legality of wiretapping in *Olmstead v. United States* (1928) when chief justice and former president William Howard Taft ruled that wiretapping a public phone did not violate the Fourth Amendment's search and seizure provision. Forty years later the Court reversed *Olmstead* and required warrants for domestic wiretaps in *Katz v. United States* (1967). The following year, Congress addressed wiretapping directly by passing the Omnibus [Crime] Controls and Safe Streets Act, which placed general restrictions on the impositions of wiretaps.³ Even though it permitted electronic surveillance only when authorized by a "court of competent jurisdiction," the act still recognized the president's constitutional power to "protect the United States against the overthrow of the Government by force or other unlawful means, or against any other clear and present danger to the structure or existence of the Government" (Markels 2005).

Following the Church Committee's investigation into past executive branch abuses of electronic surveillance, particularly the Nixon Administration's eavesdropping on Vietnam War protesters and Civil Rights activists, Congress in 1978 enacted the Foreign Intelligence Surveillance Act (FISA) to redress ambiguities in previous legislation.⁴ Attempting to balance national security interests and civil liberties, the legislation authorized wiretaps against a "foreign power" or "agents of a foreign power," but created a special FISA Court from which the Attorney General must first seek a warrant before initializing wiretaps.⁵ In cases of extreme exigency, the law gave the attorney

general 72 hours after the initial surveillance to seek a retroactive warrant from the FISA Court.

And thus the law stood until the immediate aftermath of September 11, when the Bush Administration began re-evaluating the nation's intelligence gathering capabilities in light of new challenges posed by the war on terror. John Yoo, a former official in the Justice Department's Office of Legal Counsel, wrote an internal memorandum shortly after the September 11 attacks arguing that "the government might use 'electronic surveillance techniques and equipment that are more powerful and sophisticated than those available to law enforcement agencies in order to intercept telephonic communications and observe the movement of persons but without obtaining warrants for such uses'" (Risen and Lichtblau 2005). In the fall of 2001, the administration quickly moved to implement these ideas. Although details about the program remain shrouded in secrecy, officials familiar with the program say that the National Security Agency (NSA) conducts wiretapping without warrants on up to 500 people in the United States at any given time.

The administration informed several members of Congress of the NSA program prior to its inception. In separate meetings on 25 October 2001 and 14 November 2001, Vice President Richard Cheney, Director of Central Intelligence George Tenet, and Michael Hayden, a lieutenant general and director of the NSA, briefed four members of Congress about the agency's new domestic surveillance, including Senator Bob Graham (D-FL) and Representative Nancy Pelosi (D-CA). Though Graham later claimed to recall "no discussion about expanding [NSA eavesdropping] to include conversations of US citizens or conversations that originated or ended in the United States," officials associated with the administration insisted that the meetings provided a comprehensive announcement of the new program (Gellman and Linzer 2005).

After sitting on the story for over a year, the *New York Times* exposed the warrantless wiretapping policy on 16 December 2005. Congressional Democrats immediately attacked the program (Arena 2005; Johnston 2006). The Senate's leading defender of its institutional prerogatives, Robert Byrd (D-WV), denounced the program as an assumption of executive power previously "reserved only for kings and potentates," and Barbara Boxer (D-CA) said there was "no excuse" for the president's actions (*Economist* 2006b). Former vice president Al Gore made perhaps the most cogent denunciation of the president, arguing that Bush had broken "the law repeatedly and persistently" (CNN 2006). Even the few Democrats who had previously been briefed on the program quickly expressed their disapproval publicly. Senate Intelligence Committee ranking member John D. Rockefeller IV (D-WV) released a letter he had sent to Vice President Cheney on 17 July 2003 complaining that "given the security restrictions associated with this information and my inability to

consult staff or counsel on my own, I feel unable to fully evaluate much less endorse these activities" (Lichtblau and Sanger 2005). In the House, ranking Intelligence Committee member Jane Harman (D-CA) distributed a 14-page legal analysis she had requested from former CIA counsel Jeffrey H. Smith, which called the administration's defense of the program "'weak' in light of the language and documented purpose of the Foreign Intelligence Surveillance Act of 1978" (Sanger and Shane 2006).

Perhaps more surprising was the cool reception the program's disclosure received from a number of key Republicans. Judiciary Committee chair Arlen Specter (R-PA) warned "I am skeptical of the attorney general's citation of authority," and "I think it does not constitute a check and balance." South Carolina's Lindsay Graham similarly conceded that the justifications for Bush's power grab were "a stretch" (Kuhnhehn and Henderson 2006). Many conservatives outside Congress were even more scathing in their denunciations. Former Georgia congressman and civil libertarian Bob Barr declared the program "an egregious violation of the electronic surveillance laws" (King 2005). Bruce Fein, former deputy attorney general in the Reagan Administration, suggested that the program might constitute grounds for impeachment:

On its face, if President Bush is totally unapologetic and says I continue to maintain that as a war-time President I can do anything I want—I don't need to consult any other branches—that is an impeachable offense. It's more dangerous than Clinton's lying under oath because it jeopardizes our democratic dispensation and civil liberties for the ages. It would set a precedent that . . . would lie around like a loaded gun, able to be used indefinitely for any future occupant.

Norm Ornstein, from the Conservative-leaning American Enterprise Institute, seconded this view: "I think if we're going to be intellectually honest here, this really is the kind of thing that Alexander Hamilton was referring to when impeachment was discussed" (Rehm 2005).

In a 42-page Justice Department "white paper," the administration defended the program on the basis of the Authorization to Use Military Force (AUMF) against international terror and on the grounds of inherent presidential authority as commander in chief. And the administration's claims received support from a small cadre of legal scholars, most notably from John Yoo and the attorney general, Alberto Gonzales. The majority of constitutional scholars, however, sharply criticized the administration's legal arguments (see *Fox News* 2006; Lichtblau and Liptak 2006; Lichtblau and Sanger 2006). A group of fourteen constitutional law scholars including Kathleen Sullivan, Ronald Dworkin, and Laurence Tribe rejected the administration's contention that Congress implicitly authorized the NSA program by passing the AUMF (Bazan and Elsea 2006; Nolan et al. 2006). Even Robert Levy, constitutional scholar and Federalist Society Board Member, said of the program, "The text of FISA §1809 is unambiguous: 'A person is guilty of an offense if he

intentionally engages in electronic surveillance . . . except as authorized by statute.' . . . I know of no court case that has denied there is a reasonable expectation of privacy by US citizens and permanent resident aliens in the types of wire communications that are reportedly monitored by the NSA's electronic surveillance program" (Federalist Society 2006).

When details of the secret program first became public, Bush vehemently opposed any congressional hearings into the matter. Publicly airing the government's tactics, the president warned, would play into the hands of al-Qaeda: "any public hearings on programs will say to the enemy, 'Here's what they do—adjust'" (Sanger and Shane 2006). With 58 percent of Americans supporting an investigation into the program's legality, however, Bush quickly backed off and claimed to welcome hearings; so doing, though, he made a conscious effort to reframe the debate in terms of national security objectives rather than civil liberties (Brookes 2006). In a Louisville conference center "decorated with signs that said 'Winning the War on Terror,'" Bush professed support for congressional hearings but again raised the specter of al-Qaeda: "there will be a lot of hearings to talk . . . that's good for democracy . . . just so long as the hearings, as they explore whether or not I had the prerogative to make the decision I made, doesn't [*sic*] tell the enemy what we're doing. See that's the danger" (Sanger and Shane 2006).

The White House then began an all-out media blitz in support of the program and the president's authority to order it. Attorney General Gonzales spoke at the Georgetown University Law Center and then made seven television appearances between 23 and 24 January, in which he invoked the policies of previous presidents (including George Washington, Woodrow Wilson, and Franklin Roosevelt) as precedents for the administration's actions. The president himself emphasized that the NSA program was an essential tool in a different type of war in a "different era." Claiming that FISA was inadequate to meet the nation's security needs in the post-September 11 world, the president explained: "We use FISA still . . . But FISA is for long-term monitoring. What is needed in order to protect the American people is the ability to move quickly to detect . . . Do I have the legal authority to do this? . . . The answer is, absolutely" (Bush 2005). The administration's belief that the terrorism angle would resonate with public concerns was so strong that Karl Rove, the president's chief political advisor, even signaled to the National Republican Committee that the NSA wiretapping program would be at the heart of the GOP strategy in the 2006 Midterm elections: By the eve of the impending congressional hearings, a 27 January 2006 *New York Times*/CBS News poll revealed the fruits of the administration's efforts. A majority of Americans now approved of eavesdropping without prior court approval "in order to reduce the threat of terrorism."⁶

Congressional hearings into the NSA program began when Attorney General Alberto Gonzales appeared before the Senate Judiciary Committee on

6 February 2006. During the hearings, most Democrats criticized the program, and most Republicans defended it. Party lines, however, were not impervious to passage. Chair Specter, for instance, warned Gonzales that the Supreme Court in *Hamdi v. Rumsfeld* (2005) ruled that the AUMF was not a "blank check;" and in response to Gonzales' continued assertion that the president had sufficient statutory and constitutional authority to initiate the program, Specter quipped "you think you're right, but there are a lot of people who think you're wrong" (*New York Times* 2006b).⁷ Though less blunt, a number of other Republicans echoed Specter's concerns including Lindsey Graham (R-SC), Sam Brownback (R-KS), Mike DeWine (R-OH), John McCain (R-AZ), Chuck Hagel (R-NE), Susan Collins (R-ME), and Larry Craig (R-ID).

The congressional inquiry accelerated on 16 February when the House Intelligence Committee, prompted by New Mexico Republican Heather Wilson, opened its own investigation into the NSA program, and a federal judge ordered the administration to begin turning over "internal documents on the surveillance program" to Congress (Babington and Leonnig 2006). Democrats on the Senate Intelligence Committee then pushed to open the committee's own investigation into the matter. To diffuse such calls, however, chair Pat Roberts (R-KS) announced the White House's agreement to "negotiate on legislation that would give Congress authority to oversee the eavesdropping" (Lichtblau and Stolberg 2006).

Though the administration had previously refused to admit any need for new statutory authorization for the NSA surveillance program, legislative reform quickly became the best way to quell unrest among party moderates. Alluding to past experience in the Civil War, the White House expressed its hope that these "talks will lead to legislation to approve the program, much as Congress eventually approved Abraham Lincoln's suspension of *habeas corpus* during the Civil War." Toward that goal, the president dispatched Chief of Staff Andrew Card, White House Counsel Harriet Miers, and others to the Hill to forge a compromise with congressional Republicans (Stolberg and Sanger 2006).

On 17 March 2006, Senators DeWine, Graham, Hagel, and Snowe introduced the Terrorist Surveillance Act of 2006 (S. 2455). The bill placed modest limits on the duration of warrantless wiretapping and created augmented congressional reporting requirements, but also recognized the president's legal right to authorize surveillance of American citizens' international communications without a FISA court order. Under the compromise, the NSA would retain the right to wiretap international communication without a warrant for the first 45 days, after which the administration would have to choose between discontinuing the surveillance, securing a court order, or certifying in writing to Congress the need for the wiretap's continuation. The administration also agreed to expanded briefings and reports on the program to new subcommittees drawn from the ranks of both chambers' Intelligence

Committees.⁸ Finally, the compromise required that the president establish and maintain a Terrorist Surveillance List "of groups and organizations that are subject to electronic surveillance authorized under the Terrorist Surveillance Program."

Many Democrats cried foul, noting that the alleged "compromise" gave the White House virtually everything it wanted, including the absence of any judicial review—a qualification that some Republicans, including South Carolina's Lindsey Graham who co-sponsored S. 2455, just a few weeks earlier had declared essential (Stollberg and Sanger 2006). The deal's authors, however, rejected such claims. Pat Roberts lauded the compromise as an assertion of congressional power to curb the president's actions: "There was a lot of pushback... So we kept saying, I am sorry, that is not acceptable, and the reality is such that you will either do this or you will face bigger obstacles and we will get into confrontation." Similarly, Chuck Hagel also sought to dispel the Democratic claims, calling them "laughable" and saying that he had "never been accused of buckling to White House pressure" (Shane and Kirkpatrick 2006). The compromise measure currently is referred to the Judiciary Committee awaiting further action.

Although the Senate compromise appeared to resolve the inter-branch tensions, the confluence of two additional developments in May of 2006 compelled the White House to give further ground. On 5 May, CIA Director Porter Goss abruptly resigned, prompting the White House to tap former NSA director and architect of the agency's surveillance program Michael Hayden for the vacant post. The battle for Hayden's confirmation became more complicated, however, when *USA Today* then reopened the winter's wounds and revealed the existence of another secret NSA program compiling a massive database of nearly all domestic calls logged within the United States. Although the database comprised only the records of numbers dialed and did not involve any electronic surveillance of the content of communications, the sheer scope of the program raised hackles both on Capitol Hill and alarmed the general public. Senators from both parties openly speculated that the new revelation would seriously jeopardize Hayden's confirmation and, at the very least, set the stage for a renewed battle over the controversial program (Babington 2006).

Sensing the deteriorating environment on the Hill, the White House on 16 May finally agreed to brief all members, rather than just a select few, of both the House and Senate Intelligence Committees on the operational details of the NSA surveillance program. Pat Roberts acknowledged the critical importance of the impending Hayden confirmation as the catalyst that prompted the administration's about-face: "This issue will be central to the committee's deliberations on General Hayden's nomination and there was no way we could fulfill our collective constitutional responsibilities without that knowledge" (Wilson 2006).

Despite initially denouncing any public hearings or added congressional oversight of his secret NSA surveillance program, President Bush, confronted with open discord from moderate Republicans and near unanimous opposition from Democrats, ultimately softened his stance on warrantless wiretapping. The legislative compromise currently working its way through the Judiciary Committee inherently recognizes Congress's constitutional power to limit warrantless surveillance longer than 45 days—a power the administration previously claimed was inherent in the Constitution's commander-in-chief clause. Moreover, the administration's most recent decision to brief the full membership of the House and Senate Intelligence Committees on the operational details of the NSA program directly contradicts the White House's previous position that greater disclosure of the program's details would only aid the terrorists. But provided that the intelligence committees do not demand further reforms after learning the full scope of the NSA program, the Terrorist Surveillance Act will protect the basic framework of the president's initiative. Having succeeded in casting the debate in terms of terrorism rather than civil liberties, the Bush Administration has shored up public support for the NSA program even as the president's own job approval ratings have slid into the low 30s. This steady popular support for the program has thus far helped the administration bring renegade Republicans in Congress back to the party fold and turn back their and congressional Democrats' demands for judicial review and even greater congressional oversight.

A Department of Homeland Security

In the immediate aftermath of the September 11 attacks, members of Congress, particularly those in the then Democratic-controlled Senate, began publicly calling for a dramatic overhaul of the nation's intelligence infrastructure. These members sought to create a new bureaucracy charged with coordinating the efforts of a vast array of federal, state, and local agencies involved in intelligence gathering and law enforcement. By leading the charge for administrative reorganization, they hoped to cast themselves as proponents of bold, forceful actions to shore up the nation's defense against another attack—while also preserving some measure of congressional influence over the expansion of presidential power needed to oversee the nascent war on terror.

The first salvo in the struggle over bureaucratic reorganization came on 21 September 2001, when Senate Intelligence Committee Chair Bob Graham (D-FL) and a number of other prominent Democrats introduced S. 1449, a bill to establish the National Office for Combating Terrorism. Agreeing with Michigan Democrat Carl Levin that "the President has got to have the flexibility as to how he organizes the executive branch," the bill proposed creating an office charged with coordinating different intelligence agencies and

developing a comprehensive budget for the nation's counter-terrorism strategy within the Executive Office of the President (Kane and Pershing 2001). The Office's Director, however, would require Senate confirmation before taking his post, and the legislation specifically provided for congressional oversight of the Office's activities, noting that "the location of the Office in the Executive Office of the President shall not be construed as affecting access by Congress, or any committee of Congress, to any information, document, record, or paper in the possession of the Office or any study conducted by or at the direction of the Director; or any personnel of the Office."

As the Governmental Affairs Committee prepared to hold hearings on the proposal, President Bush pre-empted congressional action on 8 October 2001 by issuing Executive Order 13228, which established his own Office of Homeland Security (OHS). The goal of the new agency "to coordinate the executive branch's efforts to detect, prepare for, prevent, protect against, respond to, and recover from terrorist attacks within the United States" overlapped with S. 1449's mandate for a new coordinating intelligence bureau. But to maximize his personal control of the new agency, President Bush not only lodged OHS within the Executive Office of the President, but he created a new special assistant to the president for homeland security to head the new agency. As such, OHS's newly appointed director, former Pennsylvania governor Tom Ridge, would not require Senate confirmation, nor would he be subject to the oversight requirements of a departmental head.⁹

Many in Congress reacted to Bush's gambit negatively, proclaiming the OHS woefully inadequate. To insulate themselves from charges of being soft on national security, most Democratic attacks on the president's action emphasized the need to go further by strengthening the agency and augmenting the resources at the director's disposal. In the House, California Democrat and ranking member of the Homeland Security subcommittee Jane Harman supported efforts to authorize OHS legislatively and increase its budget, warning: "Mr. Ridge has the critical job in the US government now, aside from the president's. In the long term, he needs the power to do more" (Becker and Sciolino 2001). Senators on both sides of the aisle concurred.

On 11 October 2001, Arlen Specter (R-PA) and Joe Lieberman (D-CT) introduced a counterproposal, S. 1534, which insisted that Ridge and his office be specifically sanctioned by and held accountable to Congress. Asserting the need for legislative oversight, Lieberman argued: "the office [Ridge's] isn't authorized by law, and he isn't confirmed by the Senate. We need to create a robust, cabinet-level agency, led by a strong director, that has the clout and resources to make the homeland security mission work" (Labaton and Pear 2001). Senator Bob Graham echoed Lieberman's views when he declared that a legislative act of Congress was needed to create an agency equipped with the full powers and tools needed to accomplish the vital goal of coordinating the nation's response to the terrorist threat: "My own

feeling is that for Governor Ridge or any other human being to be able to effectively direct [the agencies]... [it] will require more authority than the president can give him in an executive order" (Mitchell 2001a). Finally, in his testimony before the Governmental Affairs Committee on 12 October former congressman and future 9/11 Commission member Lee Hamilton (D-IN) explicitly raised the importance of congressional oversight of homeland security initiatives. Hamilton seconded Lieberman's call for the creation of a new cabinet department with its own budget and staff, and he encouraged Congress to reorganize its internal institutional operations to provide better support for and oversight of the department (Hamilton 2001).

The White House, however, refused to bend to congressional demands and stood by its unilaterally created agency. When asked whether the OHS should be restructured and Ridge face Senate confirmation, Press Secretary Ari Fleischer replied:

President just doesn't see the need for it. It's just not necessary. The office can get up and running... without needing to take that step... Similar to the National Security Council. Dr. Rice has done a very good job, of course, for this country. She's not Senate-confirmed. It is not a necessary prerequisite for a government official to do a good job on behalf of the President and on behalf of the war against terrorism. There is no need for it. (Fleischer 2001)

Other allies also came to the administration's defense, including Robert M. Gates, former director of Central Intelligence under President George H. W. Bush, who asserted in a *New York Times* editorial that "granting the office [of Homeland Security adviser] statutory authority could hurt more than help. It would reduce the flexibility President Bush and Mr. Ridge need to experiment—to work out, for example, which agency does what best" (Gates 2001).

Inter-branch tensions simmered throughout the rest of 2001, only to boil when the administration finally sought congressional funding for its bureaucratic creation. On 24 January 2002, Bush announced his request for an additional \$38 billion in funding for Homeland Security operations in the forthcoming year. Congress appeared prepared to grant the president the funds he requested; in the words of one Senator, "In the end, he'll get what he wants, maybe more" (Sanger 2002). Before signing the check, however, a growing number of members demanded that Ridge testify on behalf of the administration's request.

The White House immediately refused, citing Ridge's status as an adviser to the president, not a cabinet officer subject to standard congressional reporting and oversight requirements.¹⁰ Many Republicans supported Bush's stance—Senator Phil Gramm (R-TX) jokingly asked "should we subpoena [Bush's] mother? It is well-known that the president gets advice, and often good advice, from the former first lady. Maybe she ought to testify" (Jones and

Stevens 2002). A growing number of the president's co-partisans, however, began breaking ranks and joining Democrats in demanding Ridge's testimony. Senators Robert Byrd (D-WV) and Ted Stevens (R-AK) sent a letter to Ridge on 2 March 2005, reminding him that his "views and insights on the policies necessary to meet these objectives are critical to the committee and the nation." Maverick Republican Senator Chuck Hagel of Nebraska chastised the administration's approach: "I don't think that is a wise way to do these things. The fact is we are a co-equal branch of government... [and secrecy] does not facilitate cooperation and the spirit of working together" (Mitchell 2002a). Even apart from the issue of Ridge's testimony, many in Congress viewed the whole affair as an affront to their institutional and constitutional prerogatives, a rare feat in an atomized deliberative body with a penchant for the parochial.¹¹ According to Ernest Istook (R-OK), "the point is not whether a presidential adviser testifies, it's whether somebody can be given express major responsibilities under an executive order and then be exempted from accountability. I see it as respecting the Constitution" (Milbank 2002a).

Bush refused to yield, insisting that Ridge would not testify. In late March, the president declared, "He's part of my staff and that's part of the prerogative of the executive branch of government, and we hold that very dear" (Mitchell 2002b). But congressional critics also appeared unwavering. Rhode Island Republican Lincoln Chafee urged the White House to back down and even raised the possibility that Congress might withhold funds if the administration did not comply with its request. "In the balance, it's always a good idea to defend your budget and make a pitch. He's going to need money for his budget and it comes from that committee" (Jones and Stevens 2002). Buoyed by public opinion polls showing a clear majority of Americans supporting efforts to recast the Office of Homeland Security as a cabinet level agency (Penn, Schoen & Berland Associates 2002), Jane Harman seized the opportunity created by the uproar over Ridge's refusal to testify to advocate again for even greater congressional control over the new homeland security apparatus: "Tom Ridge needs to be a cabinet secretary subject to Senate confirmation, with budgetary authority and accountability to Congress for a homeland security strategy" (Becker 2002a).

Slowly, and reluctantly, the administration gave ground. Though Ridge informally discussed homeland security with the House Appropriations Committee on 10 April, House Democrats were not appeased. Representative Steny Hoyer (D-MD) insisted "this is a serious issue of significant importance to the country—Mr. Ridge has been given one of the most important jobs in government—and we made it very clear that this was no substitute for a formal hearing" (Becker 2002b). Eight Democrats wrote a letter to Dan Burton (R-IN), chair of the House Committee on Government Reform, requesting that discussions of homeland security be held on the record. Dennis Kucinich (D-OH) even walked out of a committee meeting in protest.

Signs that the White House would reconsider its insistence on maintaining the Office of Homeland Security as an agency within the EOP pleased Democrats further still. When speaking with a Senate panel, Mitchell Daniels, Jr., the director of the Office of Management and Budget, explained “the president has said from the outset that the structure for organizing and overseeing homeland security may evolve over time as we all learn more and as circumstances change.” Said Ridge, “I embrace it [making OHS a cabinet department] enthusiastically but the only way to do it is here—in Congress” (Becker 2002c).

Two months later, Bush refashioned congressional calls for the creation of a Department of Homeland Security as his own and publicly announced his proposal in a radio address. According to the president, the initiative was “the most extensive reorganization of the Federal Government since the 1940s;” and the president then brazenly asked the public for “your help in encouraging your Representative to support my plan” (Bush 2002a). Days later, the president again claimed credit for the idea and shared his reasons for the legislative request. “In order to get good results,” he said, “it’s important to hold people accountable and align authority and responsibility. And that’s part of my thinking, is to take the functions and put them under one—in one Cabinet agency” (Bush 2002b). Though Ari Fleischer acknowledged that discussions about creating a cabinet level agency began in earnest after the Ridge testimony row with Congress (Bumiller and Sanger 2002), at a meeting with congressional leaders Bush insisted that he had been considering the idea all along: “Ever since we first got going, I’ve been exploring this idea [creating a Cabinet-level department of homeland security]. My mind was never made up one way or the other . . . I’ve been listening to members of Congress, who have been quite articulate on the subject” (Bush 2002c).

Bush’s switch in time quickly paid political dividends. Polls immediately after the president’s announcement showed more than 70 percent of Americans supporting the creation of a new cabinet Department of Homeland Security (see Gallup/CNN/*USA Today* Poll, 7 June 2002; CBS News Poll, 18 June 2002; *Time*/CNN/Harris Interactive Poll, 19 June 2002). Even congressional Republicans who had previously championed the administration’s efforts for exclusive White House control over the Office of Homeland Security now rallied behind the new cabinet department initiative. Democrats, robbed of their political thunder, were left to lament with House Leader Richard Gephardt (D-MO) that “it would have been better to do this five months ago, but, you know, we are where we are” (Mitchell 2002c).

On 24 June 2002, House majority leader Dick Armey (R-TX) introduced H.R. 5005, the administration’s legislative proposal creating the Department of Homeland Security. The bill bore a remarkable resemblance to earlier proposals opposed by the White House, including both S. 1534 and S. 2452. The administration successfully defeated Democratic proposals further to integrate

the CIA and FBI and to include stronger protections for employees of the new Department of Homeland Security. On most issues, though, the White House capitulated to congressional demands. The new Secretary of Homeland Security would be subject to Senate confirmation and the Department bound by reporting requirements and mechanisms for congressional oversight.

Why, in the end, did the administration capitulate to congressional demands? Proposals for legislatively mandated reorganization of homeland security, after all, had floundered for months. Instead, a confluence of factors likely pressured the administration to give ground. First, the prospects for continued congressional intransigence were politically unappealing. Ultimately, Congress would almost certainly have approved the requested funds for the administration’s agency, but the growing unease within even Republican ranks threatened to spill over into other policy areas if allowed to fester. Second, the growing impetus for congressional investigations into specific intelligence failings leading up to September 11 threatened to embarrass the president precisely on the grounds where his appeal was strongest, his handling of national security. Indeed, several leading Democrats including John Conyers (D-MI) would accuse the administration of hastily introducing the Department of Homeland Security bill to distract attention from investigations into its past failings (Pear 2002). Finally, it became increasingly difficult to ignore the nascent public support for a Department of Homeland Security. In this unique political climate, through its concerted opposition to the president’s actions, Congress managed to rein in presidential unilateral powers, replacing an independent office responsible only to the president with a cabinet level department subject to Senate confirmation and congressional oversight.

The 9/11 Commission

In the immediate aftermath of September 11, 2001, both the White House and leaders of the House and Senate Select Intelligence Committees resisted calls for an investigation into the governmental failures that contributed to the attacks. Though proposals for a comprehensive investigation gained little traction in the initial weeks and months, on 18 December 2001, Robert Torricelli (D-NJ) and Chuck Grassley (R-IA) introduced a bipartisan bill (S. 1837) calling for an independent commission to investigate the events surrounding September 11. Two days later, Connecticut Democrat Joseph Lieberman and Arizona Republican John McCain introduced similar legislation (S. 1867) calling for the establishment of an independent commission with full subpoena powers to investigate failures leading up and in response to the terrorist attacks on the World Trade Center and Pentagon. Rejecting the White House’s argument that such an inquiry would undermine the fledgling war on terror, Torricelli insisted on the need for a thorough independent review: “An event of this magnitude historically cannot occur without people demanding some

accountability and some review of how it happened and what failed." McCain emphasized that the sheer scope of the issues involved and the intricacies of the requisite solutions demanded an independent investigation: "Neither the administration nor Congress is alone capable of conducting a thorough nonpartisan independent inquiry into what happened on September 11, or to propose far-reaching measures to protect our people or our institutions" (Mitchell 2001*b*).

Initially, the White House did not appear especially amenable to launching a major investigation into the intelligence failures surrounding September 11. As late as mid-January, media reports indicated that Vice President Dick Cheney had called upon the Senate majority leader to withhold any investigation whatsoever because it would "take resources and personnel away from the effort in the war on terrorism." By month's end, though, the administration had reconciled itself to some sort of investigation, but the president called on leaders in both chambers to limit its scope to the narrow inquiries proposed by the Select Intelligence Committees, whose proceedings could be kept confidential (Allen 2002; Morris 2002). By supporting the Intelligence Committee investigation, the White House hoped it could undercut support for a more wide-ranging independent investigation. The White House then opened negotiations with Intelligence Committee chairs Porter Goss (R-FL) and Bob Graham (D-FL). On 14 February 2002, the two chairs publicly announced they had reached an agreement for a joint investigation limited to examining pre-September 11 intelligence failures.

Even as the Intelligence Committees began to launch their own inquiry, advocates of an independent commission continued to press the initiative. The Committee on Governmental Affairs opened hearings on the Lieberman-McCain bill the first week of February, and by 21 March the committee voted unanimously to report it favorably to the full chamber. The White House promptly denounced the committee action. White House spokesperson Claire Buchanan toed the administration line, telling the press that while the president endorsed the limited inquiry of the Intelligence Committees, he feared that a broader investigation would risk "pulling people off the front lines who are fighting the war on terrorism" (Stout 2002). When a few weeks later the committee submitted its written report on the Lieberman-McCain bill and had it placed on the Senate calendar, the president himself publicly rejected the legislation's premise that a further independent investigation was needed. At a news conference in Germany, Bush warned: "I, of course, want this Congress to take a look at what took place prior to September 11. But since it deals with such sensitive information, in my judgment, it's best for the ongoing war against terror that the investigation be done in the intelligence committees." Warren Rudman of the Hart/Rudman US Commission on National Security in the 21st Century summed up the White House's reasons for opposing the independent commission in one word: control. "The White House feels it

can control a Congressional committee better than it can an investigative commission and the senators [McCain, Lieberman, and their allies] are afraid that may be the case" (Rosenbaum 2002).

A number of Republican allies in Congress swiftly came to the president's defense. Dismissing the need for an independent commission, they accused Democrats of jeopardizing national security and undermining the war on terror for their own political gain. The majority whip Tom DeLay (R-TX) claimed that a public report on the deficiencies of the nation's homeland security would endanger the country, insisting that "our work should prevent another terrorist attack and not make Osama bin Laden's job easier." DeLay vehemently opposed the commission's creation, suggesting the Democrats' course of action "during a time of war is ill conceived and frankly irresponsible... We will not allow our president to be undermined by those who want his job" (Mitchell 2002*d*). Representative Jennifer Dunn (R-WA) also chastised Democrats for "politicizing [the attacks]... a very, very low-level, underhanded use of a terrible incident" (Sanger and Bumiller 2002).

While the debate raged across both sides of the aisle, on 21 May, majority leader Tom Daschle announced his intention to sponsor new legislation creating an independent commission. Amid reports that the ongoing Intelligence Committees investigation was encountering difficulties obtaining information from key intelligence agencies and personnel, Daschle promptly shifted his support to the Lieberman-McCain cause. "At the very least," he said, "we ought to have a good debate about whether or not it's important to do this. Let those who oppose this idea come forth and explain themselves" (Mitchell 2002*d*).

Supporters of the commission sought to build momentum for their proposals over the course of the summer and enlisted a powerful ally in their cause to mobilize public opinion: families of September 11 victims. In early June, these families held a rally with a few lawmakers on the steps of the Capitol to support the creation of an independent commission. At the rally, Senator Joe Lieberman chided, "the reasons that they [administration officials] give [for opposing the creation] are without consequence and, in some cases, they're foolish." Senator Torricelli exhorted supporters, "there will be a national commission. It may be this week, it may be next month, it may be next year, it may be 10 years—but history is a demanding master. History will demand an answer, and we want that answer now" (Vasquez 2002).

Ironically, perhaps, it was the Intelligence Committee hearings' obvious defects that would generate the political pressure needed to force the administration to give ground. Just as soon as the inquiry began, lawmakers on both sides of the aisle began to decry the administration's stonewalling. "Are we getting the cooperation we need? Absolutely not," said Senator Richard Shelby (R-AL), the ranking Republican on the Senate Intelligence Committee. Senate Intelligence Committee chair Graham echoed Shelby's lament: "What

we're trying to do is get people who had hands on these issues. . . . And what we're being told is, no, they don't want to make those kind of witnesses available." Frustrated by the administration's refusal to cooperate, both lawmakers endorsed an independent commission to expand upon the joint investigation. Shelby sent a clear warning to the White House that "there may come a day very soon when it will become apparent that ours must be only a prelude to further inquiries" (Milbank 2002*b*).

In the committee room, after the joint inquiry heard from a number of government officials, Kristen Breitweiser, whose husband perished in the World Trade Center and who was now co-chair of the September 11th Advocates group, took the stand and delivered a politically fatal blow to the president's efforts to ward off an independent investigation. Noting the widespread failure at all levels of government to anticipate and respond to the attacks, Breitweiser emotionally and cogently appealed for an independent and more wide-ranging investigation. "It goes without saying," Breitweiser argued, "that the examination of the intelligence agencies by this Committee does not detract, discount or dismantle the need for a more thorough examination of all of these other culpable parties." To supplement the Intelligence Committees' inquiry, Breitweiser urged Congress to create an independent commission as provided for in the Lieberman-McCain and Daschle initiatives: "An independent blue-ribbon panel would be the most appropriate means to achieve such a thorough and expansive examination, in large part, because it would not be limited in scope or hindered by time limits. An independent blue-ribbon panel would provide a comprehensive, unbiased and definitive report that the devastation of September 11th demands." Finally, Breitweiser curtly rejected the administration's contentions that such an inquiry was inappropriate and even counterproductive in the current political and strategic climate:

Soon after the attacks, President Bush stated that there would come a time to look back and examine our nation's failures, but that such an undertaking was inappropriate while the nation was still in shock. I would respectfully suggest to President Bush and to our Congress that now, a full year later, it is time to look back and investigate our failures as a nation. A hallmark of democratic government is a willingness to admit to, analyze and learn from mistakes. And, it is now time for our nation to triumph as the great democracy that it is. The families of the victims of September 11th have waited long enough. We need to have answers. We need to have accountability. We need to feel safe living and working in this great nation. (Breitweiser 2002)¹²

Two days later, the administration orchestrated a complete about-face and called for the establishment of an independent commission to investigate the attacks, a commission it had consistently opposed throughout the previous year. In a letter to Speaker Hastert, the president's legislative liaison Nicholas Calio audaciously expressed concern that the Intelligence Committee

investigations "did not address the panoply of other important and related issues as they may relate to September 11," and announced that the White House now strongly supported "a focused inquiry into these matters [that] will help strengthen our ability to prevent and defend against terrorism and protect the security of the American public" (CNN 2002).

In the aftermath of the president's reversal, key congressional Democrats jumped on the opportunity to score political points. Minority leader Richard Gephardt (D-MO) emphasized the administration's stubborn refusal to endorse the commission for the past year. "I am encouraged that the White House today ended its opposition to an independent commission to investigate all aspects of the September 11th terror attacks. As I have been saying for months, we need a commission that can build on the good work of the congressional intelligence committees' joint inquiry, and help us all understand what happened, why it happened, so we can dramatically strengthen all aspects of our nation's homeland defenses." Similarly, an aide to Senator Joseph Lieberman, who introduced legislation calling for the commission in December of 2001, noted "we appreciate the White House switching its position," adding that it had taken ten months of prodding by members of Congress (Firestone and Risen 2002).

The White House, however, argued that any new commission should not re-examine intelligence failings before September 11, as this was the focus of the joint Intelligence Committee inquiry. Ignoring the administration's concerns, the Senate by a 90 : 8 vote inserted an amendment into the Homeland Security Bill establishing an independent commission charged with investigating the lead-up and response to September 11 at all levels, including intelligence. The administration made its last stand by lobbying House Republicans to oppose similar language in the House version, and many privately withdrew their support for the commission. Indiana Democrat Tim Roemer feared that "the White House may try to run the clock out as we near the end of the session and might not be as supportive of this concept as they have indicated" (Dewar 2002*a*). Minority whip Nancy Pelosi (D-CA) charged that while "the White House is professing openly to support an independent commission . . . privately they're moving to thwart the commission." Yet, both Lieberman and McCain vowed to fight on, even if they had to continue the battle in the next legislative session. "It's going to happen," declared a resolute John McCain (Dewar 2002*b*).

Again, despite continued White House objections, the administration gradually abandoned its opposition to, and even openly supported, the commission's creation and its authority to investigate all aspects, including intelligence failures, of the September 11 attacks. On 27 November 2002, more than 11 months after calls for an independent investigation into the terrorist attacks of September 11, 2001, President Bush signed H.R. 4628, the Intelligence Authorization Act. This bill created the National Commission on

Terrorist Attacks upon the United States, an organization comprised of ten members, five Democrats and five Republicans. The commission's chair was to be appointed by the president, and the assent of six members would be required to issue a subpoena.¹³ The resulting legislation was a political victory for McCain and Lieberman, and for the 9/11 families who so forcefully advocated its passage. Stephen Push, the treasurer of the lobbying group Families of September 11, explained that the new commission met their most important criteria: "We're not crazy about the president appointing the chairman," Push said, "but our greatest concern was the subpoena power" (Firestone 2002). In almost every aspect, the president had caved in to congressional and public pressure.

On the day Bush signed H.R. 4628, White House spokesperson Scott McClellan (2002) praised the creation of the 9/11 Commission and the Department of Homeland Security as "two of our highest priorities." The administration's rhetorical tactics to co-opt the popular initiatives for political gain, however, should not obscure the fact that these new-found "priorities" came about through congressional pressure. Moreover, the administration's acquiescence would ultimately come at a political cost, as the 9/11 Commission provided political ammunition to the administration's enemies in the 2004 election cycle. From the revelation that the administration had not acted on an August Presidential Daily Briefing titled "Bin Laden determined to Attack Inside the United States," to the Commission's disavowal of the administration's implied linkages between the events of September 11 and Iraq, the Commission provided plenty of fodder to presidential critics. Though the Commission's final report placed much of the blame at the feet of the FBI and CIA, with chairman Kean saying neither Presidents Clinton nor Bush had been "served properly by the intelligence agencies of this country," none of the embarrassing details about both administrations' failings would have ever been unearthed had the president possessed sole power to determine the composition and scope of the inquiry into terrorist attacks.

The Dubai Ports Deal

In the three preceding cases, the president asserted his ability to remake politics unilaterally with varying effect. Even when the president most visibly gave ground, as in the debate over the creation of the Department of Homeland Security or the independent 9/11 Commission, Bush succeeded in muting some of the most objectionable aspects of congressional proposals and even attempted to turn his acquiescence to congressional demands to his own political advantage. Though these successes reflect the president's inherent institutional advantages *vis-à-vis* the legislature, the administration's failed efforts to authorize DP World's acquisition of operations at several major US seaports—a defeat shocking both for its rapidity and totality—reminds us

that during times of war presidents are not always guaranteed even partial victories.

With little fanfare outside the nation's business pages, on 10 February 2006, Dubai-owned DP World successfully outbid other competitors in a battle to control Peninsular & Oriental Steam Navigation, a British company that had operated terminals at several American ports (Timmons 2006). Prior to the sale, the Treasury Department's Committee on Foreign Investments in the United States (CFIUS), comprised of representatives from 11 executive departments and agencies, held a routine 23-day inquiry into the deal's implications for American national security. In the body's only official meeting on the merger, the committee routinely approved of DP World's acquisition.

On the very day the deal was announced, New York Senator Charles Schumer warily discussed the national security implications of the deal and urged the administration to reconsider its support. Emphasizing the critical economic importance of the nation's maritime infrastructure, Schumer warned "just as we would not outsource military operations or law enforcement duties, we should be very careful before we outsource such sensitive homeland security duties" (Bridis 2006). But Schumer's admonition was only the calm before the storm. A week later a political maelstrom erupted within Congress when Schumer, joined by fellow Democrats Hillary Clinton (NY) and Robert Menendez (NJ) announced their intention to introduce legislation preventing the sale of US port operations to companies owned by foreign governments. As Menendez explained, "I just don't believe that our ports should be handed over to foreign governments," especially to the United Arab Emirates, with its "serious and dubious history" of terrorist activity (McGeehan 2006). Raising the specter of Dubai's connection with September 11, Menendez cited reports that two of the hijackers were from the United Arab Emirates, and that money used in the attacks had flowed through banks there.

Vocal objections to the deal raised by a number of key Republicans, particularly those representing constituencies directly affected by the pending merger, troubled the administration even more. New York Representative Peter T. King, chair of the House Homeland Security Committee, and Vito Fossella were early critics of the deal (McGeehan 2006), as was Florida Congressman Mark Foley who insisted that "the potential threat to our country is not imagined, it is real" (Magnet 2006). Stalwart Bush supporter Tom Coburn (R-OK) echoed Foley's sentiment: "Handing the keys to US strategic ports to a regime that recognized the Taliban is not a sound next step in our war against terror" (Blustein 2006a).

A few Republicans publicly supported the president and the administration's decision to allow the deal to proceed. Senator John Warner of Virginia, for example, worried that opposition to the deal would jeopardize America's relationship with Dubai; citing America's interests in the Middle East, he urged his fellow legislators to "move carefully in considering the implications of

what we do." Republican leaders in both chambers of Congress, however, quickly abandoned the president. Both House Speaker Dennis Hastert (R-IL) and Senate majority leader Bill Frist (R-TN) publicly criticized the deal and called for an extended 45-day period to assess the threat that the deal posed to national security. Frist even warned the White House that if it failed to order the review on its own initiative, he would "plan on introducing legislation to ensure that the deal is placed on hold until this decision gets a more thorough review" (Sanger and Lipton 2006).

DP World's acquisition of operations at American ports hardly ranked among the most important elements of the administration's programmatic priorities. In the days following the announcement, White House Press Secretary Scott McClellan revealed that Bush himself was unaware of the merger until after CFIUS had approved it. Treasury Secretary John Snow was similarly out of the loop, telling reporters "I learned of this transaction probably the same way as members of the Senate did, by reading it in the newspapers" (VandeHei and Weisman 2006). Precisely because the White House was not heavily invested in the decision, Bush could have easily reversed course, mollified critics on both sides of the aisle within Congress, and avoided a potentially damaging political battle.

The administration, however, refused to abide congressional objections. Treasury Secretary John Snow publicly emphasized Dubai's role as a strong ally in the Middle East and war on terror, and Secretary of State Condoleezza Rice declared Dubai "a very good friend" of the United States that should not be alienated (McGeehan 2006). Bush then escalated the stakes of a showdown with Congress by publicly threatening to veto any legislation that would interfere with the port deal. If carried out, it would be the first veto of his presidency. With a flair for the dramatic, Bush summoned reporters to the front of Air Force One for a press conference at which he proclaimed his continued support for the deal. Reasserting his toughness on issues of national security, the president dismissed the congressional concerns as unfounded: "And so, look, I can understand why some in Congress have raised questions about whether or not our country will be less secure as a result of this transaction. But they need to know that our government has looked at this issue and looked at it carefully. Again, I repeat, if there was any question as to whether or not this country would be less safe as a result of the transaction, it wouldn't go forward." Echoing concerns previously voiced by Warner, Snow, and Rice, Bush closed by emphasizing that "this is a company that has played by the rules, that has been cooperative with the United States, a country that's an ally in the war on terror, and it would send a terrible signal to friends and allies not to let this transaction go through" (Office of the Press Secretary 2006).

At the administration's request, on 24 February DP World reaffirmed its commitment to close the deal, but also announced that it would delay any

"exercise of control" over the port terminals it sought to acquire. The administration hoped that the move would give it enough time to win over skeptics in Congress. Senior presidential political adviser Karl Rove summarized the administration's strategy: "Our interest is in making certain the members of Congress have full information about it, and that, we're convinced, will give them a level of comfort with this" (Hulse and Shane 2006).

Despite the administration's efforts to reassure the nation, Congress and the public remained unconvinced. Two polls conducted in the waning days of February showed that between 59 and 69 percent of Americans opposed the deal (see *Los Angeles Times Poll*, 25 February–1 March 2006; *Fox News Poll*, 28 February–1 March 2006). Feeling the heat from their constituents, even more members of Congress, particularly on the Republican side of the aisle, ceased straddling the fence and openly broke with the White House. As his job approval numbers slid even further, from 42 percent in January to just 34 percent by 26 February, the president's calls for party loyalty yielded few dividends. Florida's Mark Foley lamented: "We've defended [the administration] on wiretaps, we've defended them on Iraq, we've defended them on so many things [Bush has] tried to accomplish, that to be left out here supporting this thing in a vacuum is kind of offensive" (Stolberg 2006). Even in conservative southern states, the political pressures to abandon the president were steep. According to Republican Governor Mike Huckabee of Arkansas, the deal "put a lot of elected officials in an impossible position . . . The visceral reaction they got from their constituents left them no choice in opposing it" (Sanger 2006a). Perhaps the most blunt attack on the administration's decision came from staunch North Carolina conservative Sue Myrick whose one-line letter to Bush ran: "Dear Mr. President: In regards to selling American ports to the United Arab Emirates, not just NO but HELL NO!" (VandeHei and Weisman 2006).

Seeking still more time to convince Congress on the merits of the deal and to allow passions to subside, the administration on 27 February persuaded DP World to request a formal 45-day review of the sale as authorized by US law. The review would include background checks on port employees, inspections at the ports, and an examination of the UAE's efforts to fight terrorism (Hulse and Shane 2006). DP World also made further concessions by announcing that the company would attempt to "segregate" its US operations from its other global interests (Sanger 2006b). Despite the virulent domestic political criticism, on 28 February Bush reaffirmed his decision to approve the acquisition, urging "lawmakers and the public to withhold judgment" until the new review was completed (Hulse 2006a).

The extended review did help the administration, as a few former critics, most importantly majority leader Frist, now announced that they were "satisfied" that the deal did not pose serious security risks (Sanger 2006b). But other Republicans such as King, Foley, Hastert, and Coburn remained

opposed, and Democrats refused to give any ground. Indeed, critics of the deal began articulating altogether new concerns, citing DP World's agreement to an Arab boycott of Israel and the US Coast Guard's apprehensions about farming out port operations to a foreign government-owned company (Hulse 2006a). The continued congressional opposition took more concrete form in two measures introduced on 27 and 28 February. With Joint Resolutions in both the House and Senate (SJ Res 32 and HJ Res 79), Susan Collins (R-ME) and Jane Harman (D-CA) directed CFIUS to provide more information to Congress before the sale could become final. Senator Byron Dorgan (D-ND) went further by introducing S. 2341, which would explicitly prohibit DP World from acquiring control of port operations within the United States.

Even as the administration escalated its lobbying effort—a front on which it was so active that Congressman Peter King chided that Bush “was viewing the 45 days more as a chance to lobby Congress than to investigate security concerns”—the ranks of vocal opponents in Congress, even among Republicans, steadily grew (Hulse 2006a). Senators John Kyl (R-AZ) and Jeff Sessions (R-AL) publicly criticized the administration over the deal. Again, pressure from constituents fueled the objections. Sessions acknowledged, “I traveled my state last week, and I got it at every stop from people... The average citizen believes that maintaining American control of our ports is important” (Hulse and Shane 2006). The barrage of criticism of the DP World acquisition both within Congress and over the air waves only further eroded support for the deal. A new poll conducted from 2 to 5 March revealed that only 15 percent of Americans supported the deal (see ABC News/Washington Post poll, 2–5 March 2006). Though sources within Congress acknowledged that many legislators “concede[d] that the White House and its Congressional allies [could] make a persuasive argument for the arrangement,” the adamant refusal of a number of core critics, coupled with intensifying public opposition to the proposal, made a showdown with the White House all but inevitable (Hulse and Shane 2006).

On 7 March, less than a month after DP World's acquisition of American port operations became public, the Republican leadership in Congress announced that they would immediately move ahead with efforts to scuttle the deal, without even waiting for the results of the 45-day investigation. House Appropriations Committee chair Jerry Lewis (R-CA) unveiled his intention during the committee's next session to add a provision to a critical defense appropriations bill that would prevent the deal from going forward. Speaker Hastert endorsed the move, as did other prominent members of the Republican House leadership.

The president continued to insist “my position hasn't changed” and maintained his threat to veto any legislation that would block the deal (Lipton and Sanger 2006). The congressional leadership, however, moved to counter that threat by adding its amendment to kill the acquisition to H.R. 4939, a

supplemental appropriations bill providing needed funds for military operations in Afghanistan and Iraq, as well as for victims of Hurricane Katrina. Chair Lewis's measure passed the committee by an overwhelming 62:2 vote on 8 March. Despite explicit warnings from congressional leaders that they had the votes needed to override any presidential veto, the administration, at least publicly, continued to stand behind its decision to approve the sale. Administration spokesmen insisted that the White House “would continue to work with Congress to try to resolve the matter, giving the company, DP World, the right to operate some shipping terminals” (Hulse 2006b).

Ultimately, the administration was spared the embarrassment of a direct defeat in Congress as DP World abandoned its efforts to assume control of the port terminals and agreed to sell its US operations to an American-owned firm. Senator John Warner broke the news on the chamber floor two hours before a scheduled vote on a motion to move forward with a Democratic bill to block the sale (Kirkpatrick 2006). Though there is no direct evidence that DP World did so at the White House's behest, officials involved in negotiations suggested that the administration had “prodded” DP World to give up on the planned deal. A senior official in Dubai acknowledged: “A political decision was taken to ask DP World to try and defuse the situation. We have to help our friends” (Sanger 2006c).

On 15 March, DP World issued a written statement that it would sell its US holdings to an “unrelated American buyer” within six months. A spokesman for P&O Steam Navigation, the British company that had been acquired by DP World, said, “I cannot emphasize enough that this will be an American buyer” (Blustein 2006b). As of this writing, a deal has not been completed, but the company's statement confirmed that until US terminal operations were sold to an American buyer, they would be operated separately from DP World's other operations, under an agreement that the Dubai company had reached with the Bush Administration. While some legislators had reacted with suspicion to the vague language of DP World's original 9 March announcement, the new statement placated even the most vociferous critics.

Ultimately, both the breadth of bipartisan and public opposition to the administration's position and the president's tactical refusal to give sufficient ground led to the demise of the DP World Ports deal. In the wiretapping case, the administration had managed to overcome virtually unanimous opposition among congressional Democrats and considerable concern within Republican ranks by reframing the debate over Americans' constitutional rights and civil liberties in terms of effectively fighting the war on terror. In the Dubai context, however, congressional opponents overwhelmed the president's vigorous assurances that he had looked into the matter and would never have approved the acquisition if it would jeopardize national security. Indeed, public support for the Dubai deal actually declined over time with

disapproval of the sale, peaking at over 80 percent in some polls. Refusing to make even modest concessions to members of his own party standing for reelection in the fall, the president completely alienated those who had stood by his side in previous crises. New York Republican Peter King spoke for many when he said that lawmakers were no longer willing to "take a lot of tough votes and... not get much in return." South Carolina Republican Lindsay Graham, who had previously objected to the administration's assertions of unbridled executive power in the wiretapping debate, suggested that the Dubai deal struck a deeper chord resonating with many members' concern with the aggrandizement of presidential power. "What you see here," Graham explained, are "people within the president's party pushing back against the administration's view of executive power" (Hulse 2006c). The constellation of public and political interests allied against the president's policies, combined with the administration's intransigence in the face of opposition, defeated the White House's policy.

Assessing Congressional Influence

When gauging the robustness of congressional constraints on presidential unilateral action, we cannot simply tally the number of times that Congress formally overturns an executive action and legislatively restores the status quo. As the preceding four cases make clear, when formulating their policies presidents often anticipate the likely reaction of Congress and adjust their chosen course, making formal congressional votes no longer necessary to induce a policy change. In stark contrast to its previous claims about executive independence, the administration gradually acknowledged the need for congressional oversight of the NSA wiretapping program in order to placate congressional opposition. Moreover, when lingering questions about the program threatened the confirmation of the president's choice for CIA director, the administration abruptly announced its intention to expand congressional briefings, a move it had heretofore flatly rejected, and promised further concessions. Similarly, in the immediate wake of September 11 Bush vehemently opposed the creation of both a Department of Homeland Security and an independent commission to investigate the government's preparation for and response to the attacks. But facing sustained congressional insistence, the administration ultimately executed an about-face and embraced both initiatives. Finally, in the only case in which Bush did not bend, his policy broke completely as congressional and public outcry forced the administration to abandon its approval of Dubai World's acquisition of operations at several major US ports.

These short case studies illustrate Congress's capacity to influence presidential behavior even absent enacting legislation compelling a change in course. Moreover, they suggest an alternative mechanism through which members of

Congress affect the president's strategic calculus: by priming and informing public opinion and raising the political costs to the president of defending his preferred policy. The next section takes this suggestion seriously and moves beyond case studies in order to test more systematically its central implications. More specifically, we employ an experimental research design to probe the capacity of Congress and other political elites to influence the public's foreign policy preferences, in this instance regarding the withdrawal of American troops from Iraq.

Rallying Public Opinion

When checking the president's unilateral powers, members of Congress are most effective when they unite around a common cause and stand ready to reverse his actions. Nothing signals defeat quite like a newly enacted law that guts a presidential initiative. The trouble, of course, is that Congress rarely has the votes required to override a presidential veto; and hence Congress's institutional capacity to constrain the president's unilateral powers would appear substantially diminished.

Fortunately, as the preceding case studies make plain, members of Congress sometimes can influence presidential decision making even when they lack the votes either to amend or overturn his orders. Through hearings, speeches, and media appearances, members of Congress, even those within the minority party, can sway public opinion and thereby raise the political costs of either advancing a new presidential action or defending an old one. By engaging the public, members of Congress can occasionally realize a measure of influence over the White House that they otherwise could only achieve through the more cumbersome legislative process. This section more systematically examines how this happens. With new experimental data, we assess the various ways in which congressional position-taking shapes the public's willingness to support the Iraq War. So doing, we pay special attention not only to the overall effectiveness of Congress as an institution in checking presidential power, but also to the ways in which appeals made by different kinds of political elite (defined by their institutional affiliation and/or partisanship) resonate with different kinds of citizens.

A Very Brief Literature Review on Political Elites and Public Opinion on War

It is a well-established truism in political science that most Americans lack even rudimentary political information (Campbell et al. 1960; Converse 1964), particularly in foreign affairs (Almond 1950; Light and Lake 1985; but see Aldrich, Sullivan, and Borgida 1989). Because experience alone cannot serve as a guide, average citizens appear especially reliant upon political elites

to formulate their foreign policy opinions (Jordan and Page 1992; Zaller 1994a).¹⁴ In the absence of criticism by other political elites, the public typically rallies behind the president. Conversely, when political actors come out and criticize the president, the public expresses less support for a presidential initiative (Brody 1991; Zaller 1992, 1994a, b). And on matters involving war, most especially, the public goes wherever political elites take them.

This literature, to be sure, aptly describes the general relationship between the public and political elites on foreign policy issues. From our vantage point, however, the literature does not adequately differentiate the various publics and political elites who contribute to contemporary debates about the presidential use of force. If only implicitly, this literature assumes that all arguments have equal weight in shaping public opinion, and that the overall balance of elite discourse best predicts popular reactions to a proposed military venture. It is not at all clear, though, that average citizens give equal credence to all political elites who participate in public debates concerning war. At least since Hovland and Weiss (1951) and Asch (1952), scholars have understood the basic principle that the identity of the actor making a specific argument has great importance for its interpretation (Lupia and McCubbins 1998; Sniderman, Brody, and Tetlock 1991).¹⁵

Two kinds of signal from political elites are likely to be especially informative. The first we label "trusted" signals. Because citizens are especially responsive to cues offered by political elites with whom they most closely align (Druckman 2001a, b), and because they tend to view their co-partisans as more trusted sources of political information than their partisan opponents (Groeling 2001), Republican citizens may find little need to update their opinion of Bush when Democratic members of Congress criticize him; similarly, Democratic citizens may not change their opinion of Bush in light of Republican speeches supporting the president. Signals are also likely to prove influential if deemed "costly." Scholars have long argued that citizens can distinguish costly and cheap talk, and that they naturally place more weight on the former than the latter (Spence 1973). If true, then both Democratic and Republican citizens ought to change their views about the president's foreign policies when either prominent Republicans come out and oppose them or Democrats come out and support them.

For the most part, though, the existing literature on war and public opinion pays scant attention to the persuasive appeal of trusted and costly signals. Though a number of scholars have examined the president's efforts to drum up public support for war (Holsti 1996; Mueller 1973; Sobel 2001), none have systematically tracked the capacity of different individuals and organizations to check the president's claims; none, that is, have shown whether opposition to or support for the president that is articulated by different kinds of political elites factor into the public's evaluation of an ongoing war.

For a variety of reasons, the oversight is readily understandable. It is extraordinarily difficult to tease out from survey data and even the most careful documentations of political speeches and hearings whether the public is following elected officials, or whether elected officials are following the public. Moreover, from survey evidence alone, it is virtually impossible to determine from whom, if anyone, the public is taking its cues—be they members of Congress, interest groups, international organizations, or whomever else. Given the empirical challenges of characterizing the relationship between political elites and the public writ large, it is little wonder that scholars have not managed to use observational data to identify the various relations between different public constituencies and political elites. Indeed, without employing an experimental framework, one wherein subjects are selectively exposed to different kinds of arguments advanced by different types of political elites, trying to distinguish the causal effect of Republican or Democratic members of Congress on Republican or Democratic citizens' foreign policy views is virtually impossible.

Two teams of scholars, however, have recently accepted the challenge. Using a series of Gallup surveys from World War II, Adam Berinsky (2005) demonstrates that during periods of partisan conflict in foreign policy, opponents and supporters of the president split on the war as their levels of political information increased, with each group taking its cues from the political elites of their affiliated party. Conversely, when elites of both parties spoke with one voice, mass opinion on US policy also converged. Matthew Baum and Timothy Groeling (2004) test a more nuanced theory of how a congressperson's party identification moderates the influence that her support for (or opposition to) the president has on his public approval ratings. From content analyses of ABC news broadcasts and Gallup polls, Baum and Groeling confirm Berinsky's finding that partisan identifiers take their cues primarily from elites of their own party. They also show that more credible evaluations of a president's actions—criticisms from members of his own party and support from the opposition—have a greater impact on popular judgments of the president than do other elite arguments appearing in the national media.

In three respects, we build on the foundations that Baum, Berinsky, and Groeling have erected. First, we expand the scope of inquiry by examining how the same argument's influence on public opinion varies when it is made by different political actors who frequently appear in the media. Second, by shifting the level of analysis from the aggregate to the individual level, we explore how source identity effects are moderated by the partisan attachments of each respondent.¹⁶ Finally, and perhaps more importantly, we introduce an experimental design that alleviates concerns about identification and endogeneity, which regularly plague observational studies that correlate the actions of political elites with the opinions of average citizens.

A Simple Experiment

In coordination with Time-Sharing Experiments for the Social Sciences and Knowledge Networks, an online polling firm, in the spring of 2006 we conducted a simple experiment designed to gauge the relative influence of political elites on the public's willingness to back the president's preferred policy on the Iraq War. With a nationally representative sample of 1,617 adults,¹⁷ we randomly assigned individuals to one of nine (one baseline, eight treatment) conditions that presented various vignettes about the positions of different members of Congress, the United Nations, and international aid organizations on the Iraq War. We then asked the respondents whether they supported the president's preferred policy. Given random assignment, differences in the levels of support for the president's position that are observed across the various conditions can reliably be attributed to the treatments applied.

Subjects assigned to the baseline condition were told the following: "According to President Bush, considerable progress is being made toward building a stable, democratic government in Iraq. President Bush opposes setting a fixed timetable for withdrawal of American troops from Iraq." Subjects then were asked whether they "strongly agreed," "agreed," "somewhat agreed," "neither agreed nor disagreed," "somewhat disagreed," "disagreed," or "strongly disagreed" with the following statement: "The US government should not set a fixed timetable for the withdrawal of troops from Iraq." Agreement, as such, connotes support for Bush's policy, and disagreement connotes opposition.

For each of the treatment conditions, subjects read exactly the same text on Bush and were asked exactly the same question. After learning Bush's position, however, subjects were told that either "many Democrats within Congress," "many Republicans within Congress," "many members of the United Nations," or "many international aid organizations" either agreed or disagreed with the president's claims, and that these individuals or groups either supported or opposed setting a fixed timetable for the withdrawal of troops. The four groups and two positions generate the eight treatment conditions ($4 \times 2 = 8$) that complete the experiment.

Several features about this experiment deserve notice, each of which suggests that whatever differences we observe across the various experimental conditions are likely to represent a lower-bound on the actual influence that different political elites wield on public support for a presidential use of force. First, in order to recognize the president's privileged stature in public debates about war, Bush's position is always listed first. Second, the experiment focuses on an issue that has already received extensive public attention, and about which respondents are already likely to have formulated an opinion. Unlike prospective military ventures (e.g. Iran) or smaller past ones (e.g. Liberia), the Iraq War had dominated public debate for fully three

years by the time this experiment was conducted. Third, the "treatment" itself is quite modest. Respondents only receive the president's view of the situation in Iraq—namely, that considerable progress is being made. When the treatment conditions introduce the positions of other political elites, they offer no new information or competing characterizations of conditions on the ground. Hence, rather than being given a long list of reasons either to support or oppose a fixed timetable for the withdrawal of troops, respondents are merely informed that certain individuals in certain organizations support or oppose the president. As a result, we do not present any competition among elites over the framing of the situation in the field or the nature of the policy choices available; in this experimental context, the only way other elites can influence public opinion is by simply expressing their support for or opposition to the president's position.

Findings

Table 4.1 presents the main results. Each of the figures represents respondents' average levels of support for the president's position.¹⁸ Possible responses ranged from 1 to 7, with higher values representing greater support for the president's position, lower values representing less support. As one might expect, Republicans (column 1) and Democrats (column 2) differ markedly from one another. In the baseline condition (row 1), the mean Republican

Table 4.1. Support for president across experimental conditions

	Republicans	Democrats	All respondents
Control condition	5.01	2.92	3.73
Treatment conditions that present opposition to the president from:			
Republican members of Congress	4.91#	2.71	3.74
Democratic members of Congress	5.79*	2.97	4.18*
United Nations	4.81#	2.94#	3.82
International aid organizations	4.86#	2.76#	3.64#
Treatment conditions that present support for the president from:			
Republican members of Congress	5.59#*	2.99	3.69
Democratic members of Congress	5.77*	2.98	4.16*
United Nations	5.91#*	3.45#*	4.03*
International aid organizations	5.38#	3.16#	4.16#*
(N)	41–62	47–64	166–90

Notes: Table presents weighted, mean results on 7-point scale, where 1 represents strong disagreement with the president's position on Iraq and 7 represents strong agreement.

* denotes differences with the control condition that are statistically significant at $p < .10$ on a one-tailed test.

denotes differences with the corresponding opposite condition that are statistically significant at $p < .10$ on a one-tailed test.

response was "somewhat agree" (5.01 on the 1–7 scale), as compared to "somewhat disagree" (2.92) for Democrats. This difference is both substantively and statistically significant.

The most important findings concern the differences observed across experimental conditions. Here, we highlight two sorts of comparisons. First, we contrast respondents' support for the president when they are exposed to only his position (row 1) with their support when also exposed to other views (rows 2–9). Such comparisons that are statistically significant are denoted with an asterisk (*). Second, we compare respondents' support for the president when they are told that different political elites *oppose* him (rows 2, 3, 4, and 5) with their support when told that the same political elites *support* him (rows 6, 7, 8, and 9, respectively). In this instance, statistically significant differences are denoted with a no. sign (#). We summarize the main findings associated with each comparison in turn.

COMPARISON 1: TREATMENT VERSUS BASELINE CONDITIONS

When told that members of Congress, the United Nations, or international aid organizations supported the president, Republican and Democratic respondents consistently offered higher levels of support for Bush than when they were told only the president's position. In every instance, the values in rows 5–9 are higher than those in row 1. In three of four instances for Republicans, and one in four instances for Democrats, the differences are statistically significant.

For the most part, meanwhile, opposition to the president also had the expected effect on respondents' views about withdrawing from Iraq. Momentarily putting aside those cues coming from Democratic members of Congress (row 3), we find that almost every value in rows 2, 4, and 5 is smaller than those observed in the baseline condition. Though none of these differences as presented are statistically significant, when using unweighted data, the responses of Democrats exposed to opposition from Republican members of Congress (row 2, column 2) is statistically significantly different from the baseline condition. Moreover, the sheer consistency of these findings suggests that opposition from political elites may depress, if only moderately, the support of both Republican and Democratic respondents.

The clear exception to this pattern of results is row 3. It is not altogether surprising that opposition from Democratic members of Congress did not affect the views of Democratic respondents. Given the widespread disaffection with the Iraq War among Democrats, combined with the fact that at the time of the experiment most Democratic members of Congress were openly criticizing the president, the mere exposure to Democratic opposition offered little additional information above and beyond the baseline condition. The significant and positive effect for Republican responses, however, hardly comports with our theoretical expectations. Among Republican respondents, support for the

president actually *increased* when they were told that Democratic members of Congress opposed the president. It is possible that when told that Democrats oppose the president, and thus given two cues rather than one, Republicans were better able to discern their preferred position. Additionally, the perceived stridency of Democratic dissent that received such prominent media coverage at the time of this experiment also may have contributed to Republicans' reticence to support any policy endorsed by the opposition party. Whatever the explanation, though, these findings suggest that opposition voiced by some political elites occasionally can be counterproductive, at least when directed at partisan opponents within the public.

COMPARISON 2: DIFFERENCES ACROSS TREATMENT CONDITIONS

Given that most political speech is contested, that no single actor monopolizes public debate about any policy agenda, the second comparison—between respondents receiving the same group's cues supporting and opposing the president's policies—is especially instructive. Members of Congress, the United Nations, and international aid organizations regularly participate in public discussion regarding war. Does it matter, then, what they say? The findings presented here overwhelmingly suggest that it does. Again and again, Democrats and Republicans alike expressed higher levels of support for the president when told that other political actors supported the president (rows 6, 7, 8, and 9) than when told that these same actors opposed the president (rows 2, 3, 4, and 5, respectively); and in three of four instances for Republicans, and two of four for Democrats, the differences are statistically significant.

Republicans appeared especially susceptible to appeals made by members of their own party within Congress and by the United Nations. Told that these two groups supported the president, Republicans were 0.68 and 0.90 points (or 0.36 and 0.48 standard deviations) more likely to support him than when they were told that these respective groups opposed him. Democrats, meanwhile, took special notice of the positions assumed by international aid organizations and the United Nations. For these two respective groups, differences of 0.40 and 0.51 points (or 0.21 and 0.27 standard deviations) were observed across the experimental conditions.

KEY LESSONS

Two aspects of these findings deserve special notice. First, the views of Republicans tended to be more pliable than those of Democrats.¹⁹ Three years into the war, most Democrats may have made up their minds about the efficacy of staying the course, such that the mere presentation of supporting or opposing positions by other political elites only marginally affected their propensity to support the president. Still, Democrats were not entirely impervious to

influence. Differences between Democrats receiving supporting and opposing group cues are statistically significant for both the United Nations and international aid treatments; and in the former instance, differences between the supporting treatment and baseline conditions were also statistically significant. And consistent with theoretical expectations, Democrats receiving the "credible" signal of elite Republican opposition to the White House expressed lower, albeit not statistically significantly different, mean levels of support for the president than did either Democrats assigned to the baseline condition or those assigned to the mirror treatment condition in which subjects received supporting Republican cues.²⁰

Second, both Democratic and Republican respondents tended to update their views on Iraq to a greater extent when told about the positions of the United Nations or international aid organizations than when told about those of either political party within Congress. This result may be due to the fact that the public already possessed considerable information on both parties' positions on Iraq, but comparatively little information about the positions of the United Nations or aid organizations.²¹ In similar experiments we report elsewhere (see Howell and Kriner forthcoming), we asked respondents whether they would support or oppose military action against nations accused by the administration of harboring terrorists and of committing human rights abuses. In these hypothetical scenarios, the effects associated with Republican and Democratic congressional cues appeared larger than those associated with the United Nations or international aid organizations.

No single experiment, of course, can establish once and for all how public appeals made by members of Congress affect the content of public opinion. Much depends upon the wording of the questions asked, the amount of information that subjects are afforded, their prior views of the president, and the specific features of the military deployment itself. And in any experiment, particularly one with relatively modest sample sizes, responses observed across treatment conditions may vary at least in part for idiosyncratic reasons. Hence, before rushing to Capitol Hill to inform Democratic members that all their efforts to persuade Republican citizens are in vain, we strongly recommend the replication and extension of this research.

Nonetheless, the brief experiment examined here suggests a valuable lesson about the politics of unilateral action: should its members wish to challenge a president intent on either advancing or defending a controversial public policy, even one that strictly involves the use of military force, Congress is not completely at a loss if it cannot build the coalitions required to enact new laws that amend or overturn the president—something remarkably difficult to accomplish in a process laden with collective action problems, transaction costs, and multiple veto points. Members, instead, can stake out positions that may profoundly affect the public's support for war. As we have seen, who exactly makes these appeals matters greatly for different segments of

the American public; on the whole, the findings observed here lend modest empirical support to prior literatures that emphasize the importance of credible and costly signals. But coming from the right political elites, and directed at the right constituencies, public appeals can either augment or deplete the pool of public support for military ventures conducted abroad.

Conclusion

One of the most remarkable facts about inter-branch politics during the past five years, we believe, is just how rarely open conflicts have arisen. This is a president, after all, who as of this writing still has not seen fit to issue a single veto, and a Congress which has done precious little outwardly to check even the most egregious (perhaps even unconstitutional) displays of executive power. Though some of his most ambitious domestic policy initiatives have either been laid asunder (Social Security) or vitiated (the choice provisions of No Child Left Behind), this president's ability to wage war—whether against Afghanistan, Iraq, or a nebulous band of terrorists—would appear unassailable.

It certainly is the case that this president has unilaterally issued some of the most significant and controversial foreign policies witnessed in the modern era and that Congress has abdicated some of its constitutional responsibilities to oversee matters involving war. Republican majorities in Congress, September 11, the looming threat of new terrorist attacks, and a history of transferring war-making authority from the legislative to the executive branches have contributed mightily to the current president's freedom to write and implement foreign policy. The absence of visible congressional checks on Bush's unilateral powers, however, should not be confused with a total derogation of the nation's system of checks and balances. Although this president has sought aggressively to expand and protect his power, as modern presidents are wont to do, he also has proceeded strategically, selectively, and at times even cautiously, careful not to issue policies that he knows full well Congress or the courts will promptly reverse.

The case studies presented above reveal a consistent pattern: the president comes out strongly on behalf of his preferred policy, members of Congress object vocally, and the president then promptly, though sometimes assuming airs of triumph, retreats to less controversial ground. This president, like all presidents, has not exercised his unilateral powers with reckless abandon. Instead, he has used them to push outward on the boundaries of his own authority just as far as he can, but then he has consistently stopped; and when it has become clear that he actually has gone further than most members of Congress would prefer, he then has backtracked. When Congress has moved to amend or overturn his actions, and even when sufficient numbers

have vocally expressed their disapproval, something our experiment shows can have a tangible impact on public opinion, the president has quickly sought compromise, and for good reason. In the one instance when the president refused to budge at all, the Dubai ports deal, Bush's loss was near complete.

Trying to predict when, and whether, a president will exercise his unilateral powers, it will not do to simply divine the president's true preferences and juxtapose them against the existing corpus of law. One must assess the probability that Congress and/or the courts will object to a unilaterally instituted executive order, executive agreement, proclamation, or directive, and then forecast the likely outcome of the ensuing struggle—be it deleterious judicial ruling, the loss of appropriations, an amended order, or a hostile public. Though the influence gleaned from unilateral powers is considerable, it is not absolute. In the wake of congressional opposition, Bush often has settled for policies that do not map perfectly onto his true preferences, as best they can be discerned. And so doing, the Bush presidency reminds us that politics persist, even in a policy domain where all concede that presidential power reaches its zenith.

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Notes

1. However, in a vivid example of the limits on presidential unilateral power, the Supreme Court on 29 June 2006 struck down Bush's unilateral creation of military tribunals to try terror suspects as in violation of both the congressionally enacted Uniform Code of Military Justice and the Geneva Conventions (*Hamdan v. Rumsfeld*). Invoking Jackson's concurring opinion in *Youngstown v. Sawyer* (1952), Justice Kennedy in his concurring opinion argues that because the president's action directly contradicts congressional statute, the tribunal case falls within Jackson's third category in which presidential "power is at its lowest ebb."
2. We thank Ben Sedrish, Brad Feldman, and Charles Griffin for their assistance in compiling these case studies.
3. The legislation was in part inspired by Hal Lipset's unsettling demonstrations detailing the advantages of concealed recording technology in front of a Senate Subcommittee.
4. The formal name of the committee, which Idaho Democratic Senator Frank Church chaired, was "The United States Select Committee to Study Governmental Operations with Respect to Intelligence Activities."
5. The attorney general was permitted to bypass the FISA Court if surveillance was solely directed at communications used exclusively "between or among foreign powers or on property or premises under the open and exclusive control of a foreign power" (Bazan and Elsea 2006, 25).
6. Other polls showed similar results. See *Rasmussen Reports* 2005, 2006.
7. For complete testimony, see Federal News Service 2006.
8. The deal would also provide classified briefings to seven members, four Republicans and three Democrats, of the Senate Intelligence Committee: Democratic Senators Carl Levin (MI), Dianne Feinstein (CA), and John D. Rockefeller IV (WV) as well as Republican Senators Pat Robert (KS), Orrin G. Hatch (UT), Mike DeWine (OH), and Christopher S. Bond (MO).

9. A parallel situation arose when the 9/11 Commission sought the testimony of Bush's national security adviser, Condoleezza Rice. The White House initially refused requests for her public sworn testimony, which the administration claimed infringed upon the president's need for private counsel. Only later, after political clamoring from Democrats and Republicans, did the administration acquiesce.
10. Alison Mitchell (2002a) describes the situation as follows: "The dispute over whether Mr. Ridge will appear formally before Congress stems in part from Mr. Bush's decision to create a homeland security office inside the White House and not as a separate cabinet agency run by an official confirmed by Congress. The president and Mr. Ridge have repeatedly said that because Mr. Ridge, former governor of Pennsylvania, is close to Mr. Bush, he will have enough power to be effective and does not need a separate agency or his own budget powers. That he is a White House adviser and not a cabinet official also means that he is subject to less congressional oversight—a fact that is becoming an irritant between Congress and the administration."
11. For the difficulties Congress has in protecting its institutional prerogatives, see Mayhew 1974; Wawro 2000; Moe and Wilson 1994.
12. See also (<http://intelligence.senate.gov/0209hr/020918/briefweises.pdf>), accessed 21 November 2006.
13. Bush initially tapped former Secretary of State Henry Kissinger for the post, but Kissinger later stepped down due to business conflicts of interest. Instead, the administration turned to former New Jersey Governor Tom Keane, while congressional Democrats (who had first asked former Senate majority leader George Mitchell) selected former Indiana congressman Lee Hamilton for the vice chairmanship.
14. A number of scholars have examined how features of a proposed deployment—the character of a mission (Jentleson 1992); the success of a mission (Kull and Clay 2001; Feaver and Gelpi 2005); and casualties (Larson 1996, 2000; Gartner, Segura, and Wilkening 2000)—affect public opinion. We do not intend to test their claims here. Instead, we focus on the capacity of different political elites, in a competitive political environment, to sway public opinion for or against the use of military force.
15. The literature on source effects, however, focuses primarily on issues that do not concern foreign policy and tends to vary aspects of source identities apart from their place in government. For general differences in the persuasive power of appeals made by various government and non-governmental sources, see Page, Shapiro, and Dempsey 1987; for the reinforcing effects of partisanship, see Ansolabehere and Iyengar 1995; and for the effects of the race and perceived credibility of the source, see Kuklinski and Hurley 1994 and Druckman 2001a, b respectively.
16. At the aggregate level, work by Baum (2002) has shown that popular responses even to "rally events" are moderated by individuals' party attachments.
17. We had a completion rate of 70.3 percent, and a response rate of 30.6 percent.
18. Because respondents were randomly assigned to control and treatment conditions, the differences in means reported in Table 4.1 are unbiased. (To make sure that the randomization worked, we compared the background characteristics of subjects assigned to the nine conditions. On no dimension except age do we find any

evidence that individuals across conditions differ systematically from one another.) There are modest efficiency gains to be had from pooling the observations and estimating regressions that include background controls. We have estimated a series of multivariate models, which yield results virtually identical to those observed in Table 4.1.

19. When using unweighted data, however, the observed differences between Democrats and Republicans attenuate.
20. When using unweighted data, the difference between the supporting and opposing Republican congressional treatment conditions for Democratic respondents also is statistically significant.
21. Moreover, even a casual observer of the news is more likely to react skeptically to the cues that many Republicans in Congress oppose the president or many congressional Democrats support the administration's policies than they would to similar cues made by the United Nations or outside interest groups. While there are a handful of Republicans and Democrats who do hold these views, most news coverage emphasizes the partisan divide in Congress on Iraq policy. If these treatment conditions conflict with respondents' prior understanding of the state of the congressional debate, it could significantly muddle the experimental effects. The hypothetical experimental scenarios discussed briefly below and more fully in Howell and Kriner (forthcoming) address such concerns.