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## 44 to reverse 43's executive orders

By: [Ben Smith and Lisa Lerer](#)

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President-elect Barack Obama is expected to move swiftly to reverse executive orders regarding torture of terror suspects, the military prison at Guantanamo Bay and other controversial security policies, sources close to his transition said, in dramatic gestures aimed at reversing President Bush's accumulation of executive power.

Senator Russ Feingold (D-WI) said he's been informed that President Obama will support his proposed legislation to make public some opinions from the Justice Department's Office of Legal Counsel, which issued some of the Bush Administration's most sweeping claims of executive power. Obama also has promised to limit President Bush's practice of using "signing statements" to amend legislation.

"Every day we get indications that they're serious about reversing the abuses of the Constitution," Feingold, a harsh Bush critic, told Politico. Feingold said he thinks Obama is likely to issue executive orders rapidly reversing Bush policies, and others have indicated that those will likely cover the interrogation and detention of terror suspects, and keeping the records of past presidents secret.

"I don't know in what order or how fast" Obama's executive orders could come, he said. "It'll be important that a couple of them be done immediately, and I think they will be, to show there's a strong break from the current policy."

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Chris Lu, executive director of Obama's transition team, told supporters in a conference call earlier this month that Obama's aides have "started developing executive orders that the pres elect is considering –not only ones the President-elect will sign after January 20, but also ones we will want to repeal."

Obama aides didn't respond to requests for more detail, but the president-elect campaigned against what he called Bush's abuse of executive authority.

"I was a constitutional law professor, which means unlike the current president, I actually respect the Constitution," Obama told an audience at a campaign fundraiser in 2007.

In "Change for America," a book by the Center for American Progress Action Fund that was designed as a blueprint for Obama's presidency, Yale Law School dean Harold Hongju Koh outlined "a package of executive orders, proposed legislation, agency shakeups, and concrete foreign policy actions" the new president should embrace, including "four key executive orders" requiring the closing of Guantanamo Bay and ending the torture of detainees.

The Associated Press reported Monday that transition advisers said Obama could sign an executive order in his first week ordering the closure of Guantanamo Bay, although

shuttering the prison and transferring the prisoners somewhere else would take time.

On Sunday, Obama promised to close the military prison, but cautioned that it may not happen as quickly as civil rights advocates would like.

"I think it's going to take some time, and our legal teams are working in consultation with our national security apparatus as we speak to help design exactly what we need to do," Obama said on ABC's 'This Week'. "But I don't want to be ambiguous about this. We are going to close Guantanamo, and we are going to make sure that the procedures we set up are ones that abide by our Constitution."

Responding to a 2007 questionnaire from [the Boston Globe](#), Obama said repeatedly that the president doesn't have the power to disregard Congress in matters of war and national security. But he was vague on the question of executive privilege — his right to keep documents and testimony about White House decisions from Congress.

Obama also defended a president's right to use signing statements to clarify law, but he criticized Bush's "clear abuse of this prerogative" to undermine laws he didn't like.

"He is definitely going to handle signing statements in a very different fashion than Bush," said Norm Ornstein, a scholar at the American Enterprise Institute. "He'll issue some, no doubt, but he'll do it on a limited basis, and in a much more constrained way - he won't be saying, 'I refuse to execute this portion of the law,' for example."

Obama also may be less inclined to cross Congress as long as both houses are controlled by Democrats.

Although he has said little on the issue since his election, foes of executive power have been encouraged by several of Obama's hiring choices. John Podesta, who Obama chose to lead the transition, testified before Feingold's hearing on "restoring the rule of law" and made a series of [specific recommendations](#), beginning with an executive order establishing "a presumption against classification in cases of significant doubt" and another revoking some secrecy privileges for vice presidents and for the relatives of former presidents.

Obama's incoming Attorney General, Eric Holder, also denounced Bush's policies, telling the American Constitution Society last year that "our needlessly abusive and unlawful practices in the 'War on Terror' have diminished our standing in the world community and made us less, rather than more, safe."

Perhaps Obama's most important staff choice on this front was Dawn Johnsen, who will head Justice's Office of Legal Counsel. Johnsen, a law professor at the University of Indiana, was a fierce critic of Bush administration interrogation policies and the legal opinions underlying them. She [recently wrote](#) that "the assistant attorney general for OLC and other top Department of Justice officials must also be prepared to resign in the extraordinary event the President persists in acting unlawfully or demands that OLC legitimize unlawful activity."

"I was pleasantly surprised that Obama seems to have picked a head of the Office of Legal Counsel who is willing to tie his hands," said Gene Healy, a vice president at the

libertarian Cato Institute.

At the same time, Johnsen served in the Clinton Administration office of legal counsel, which fiercely protected presidential power, and argued that the executive branch did not need authorization to take military actions in Haiti and Bosnia and to strike a pharmaceutical factory in Sudan.

"It will be very interesting to see which person we are going to see," said a lawyer familiar with Johnsen's work. "Will it be like more like views of OLC of the 1990s, or has she decided that Clinton OLC went too far?"

Indeed, not all of Obama's appointees are reflexive skeptics of executive authority. A potential White House counterbalance to Johnsen is Cass Sunstein, a longtime Obama advisor from their University of Chicago days who will head the Office of Information and Regulatory Affairs.

Although he's best known as a prolific, and liberal, legal scholar, [Sunstein defended](#) Bush's stand on his power to resist Congress -- though not of his claims of sweeping national security powers.

And observers agree that Obama will be sorely tempted to expand presidential power, not curtail them, once the secrets he's keeping and the policies he's defending are his own, not his predecessor's.

"Some people expect (Obama) to repudiate some executive powers, and it's certainly possible he could say that," said Eric Posner, a law professor at the University of Chicago School of Law. "I just don't think presidents voluntarily give up power. . . The last president who cut back on presidential powers was Taft."

Obama's critique of executive power, and discussions about it in the Bush years, have focused largely on foreign policy, but the new president takes office amid the largest-scale government intervention in the American economy since the middle of the last century. The presidents of that era - Roosevelt and Truman - found themselves restrained by the courts in their attempts to meddle in the economy, and some scholars suggested that Obama may be seeking to expand his powers more at home than abroad.

"On the one hand, he's dialing back some of the national security powers that have been controversial over the last eight years," said Cato's Healy. "On the other hand, he seems very comfortable redesigning the economy by executive fiat."

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