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Newroom: Margulies Chronicles Bush's Legal 'Detours'

Roger Williams University School of Law

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Newsroom

Margulies Chronicles Bush's Legal 'Detours'

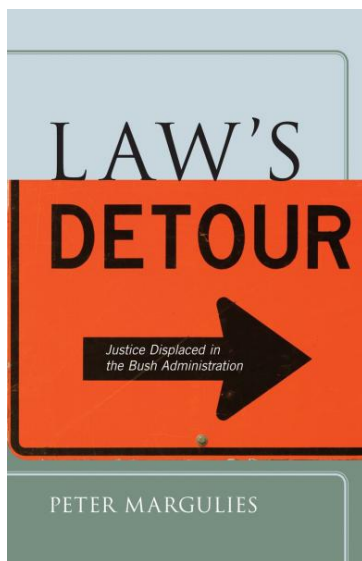
Professor Peter Margulies' new book, "Law's Detour: Justice Displaced in the Bush Administration" (NYU Press, 2010), is receiving great reviews.

Professor Peter Margulies' new book, [Law's Detour: Justice Displaced in the Bush Administration](#), published by NYU Press on April 26, 2010, has been receiving positive attention in the academic blogosphere:

From the [ACSBlog](#) of the American Constitution Society:

Moving Around the Law: Lasting Effect of the Bush Administration's Detours

June 3, 2010: As the Obama administration faces national security, economic, and environmental challenges, it has learned anew that the excesses of the Bush administration are hard to escape.



Law's Detour: Justice Displaced in the Bush Administration argues that the signature strategy of the Bush administration was the construction of detours around legislation, legal principles, and historical practice. When legal impediments to the detention, interrogation, and surveillance of suspected terrorists threatened to change the administration's plans, Vice President Cheney and his counsel, David Addington, simply procured legal opinions that interpreted away those hindrances. When federal prosecutors refused to target the administration's political foes, top officials at the Justice Department and the White House fired the prosecutors. When the financial markets showed clear signs of overheating before the subprime mortgage meltdown, senior administration officials tried to gut existing regulation.

The flawed detours pursued by the Bush administration had ideological roots in the imperial presidency, the unitary executive, and laissez-faire economics. Cheney and Addington believed

that the president should exercise unilateral authority, unconstrained by Congress or the courts. This perspective produced the warrantless wiretaps of the Terrorist Surveillance Program (TSP), which undermined the Foreign Intelligence Surveillance Act's comprehensive scheme. Bush officials also championed the unitary executive theory, which empowered the president to remove any executive branch employee. Administration officials such as Monica Goodling, a recent graduate of Pat Robertson's law school, erased the line between political appointments and merit-based civil service hiring in the Justice Department. At the Securities and Exchange Commission, an anti-regulatory agenda loosened constraints on investment banks and helped pave the way for the credit collapse of 2008.

Shedding this legacy will not be easy. The Obama administration has learned that Guantanamo is like Humpty Dumpty in reverse – hastily and heedlessly put together, and extraordinarily difficult to dismantle. In the domestic realm, the Minerals Management Service (MMS) of the Interior Department presided over an ethics-free zone in which sharing drugs and sex with representatives of regulated industries was rampant. The MMS' asleep-at-the-switch approach to regulation helped pave the way for the Gulf oil leak disaster that is now threatening long-term damage to America's coastline.



The Bush administration's reliance on legal detours teaches some crucial lessons about process and the rule of law. While great presidents like Lincoln and both Roosevelts found occasional detours expedient, they sought approval from stakeholders and the public. A track record of transparency and dialog builds credibility, which the Bush administration lost after its tardy response to the tragedy of Hurricane Katrina. In contrast, efforts to monopolize power are often myopic, leading to popular disillusionment, judicial skepticism, and the whistleblowing that disclosed the TSP and coercive interrogation. Moreover, excesses in national security often spill over into other domains: The threat of terrorism was a convenient rationale for hiring "loyal Bushies" and firing those not deemed to be "real Americans."

Some in the Bush administration understood these lessons. In President Bush's second term, for example, State Department officials like John Bellinger, Philip Zelikow, and Matthew Waxman and legislators like Senator Lindsey Graham of South Carolina fought to uphold the principles of the Geneva Convention. They and others, including military personnel worried about the safety of America's own uniformed forces, noted that coercive interrogation usually yields information that a subject believes the interrogator wishes to hear. However, power players like Vice President Cheney and David Addington never abandoned the argument that detours were an emblem of virtue, and consultation a badge of weakness. Understanding the Bush

administration's detours can help us see the warning signs in the future, and strive to stay on the right track.

From the [ImmigrationProf Blog](#):

April 26, 2010: From the Justice Department's memos defending coerced interrogation to Alberto Gonzales' firing of U.S. Attorneys who did not fit the Bush Administration's political needs, *Law's Detour* paints an alarming picture of the many detours that George W. Bush and his allies created to thwart transparency and undermine the rule of law after September 11, 2001. Pursuing those detours, Bush officials set up a law-free zone at Guantánamo, ordered massive immigration raids that separated families, and screened candidates for civil service jobs to ensure the hiring of "real Americans." While government needs flexibility to address genuine risks to national security—which certainly exist in the post-9/11 world—the Bush Administration's use of detours distracted the government from urgent priorities, tarnished America's reputation, and threatened voting and civil rights.

In this comprehensive analysis of Bush officials' efforts to stretch and strain the justice system, Peter Margulies (Roger Williams) canvasses the costs of the Administration's many detours, from resisting accountability in the war on terrorism to thwarting economic and environmental regulation. Concise and full of compelling anecdotes, *Law's Detour* maps these aberrations, surveys the damage done, and reaffirms the virtues of transparency and dialog that the Bush administration dismissed. KJ