

# SIDNEY'S IMPERIAL PRESIDENCY

Sidney Blumenthal and I were apparently making the same point at about the same time. Not long after I argued, on a panel on the Imperial Presidency, that there are those within the Administration who believe in the rule of law and can therefore be mobilized against it, Sidney was finishing up his column making that point in much more comprehensive fashion.

In private, Bushadministration sub-Cabinet officials who have been instrumental in formulating and sustaining the legal "war paradigm" acknowledge that their efforts to create a system for detainees separate from due process, criminal justice and law enforcement have failed. One of the key framers of the war paradigm (in which the president in his wartime capacity as commander in chief makes and enforces laws as he sees fit, overriding the constitutional system of checks and balances), who a year ago was arguing vehemently for pushing its boundaries, confesses that he has abandoned his belief in the whole doctrine, though he refuses to say so publicly. If he were to speak up, given his seminal role in formulating the policy and his stature among the Federalist Society cadres that run it, his rejection would have a shattering impact, far more than political philosopher Francis Fukuyama's denunciation of the neoconservatism he formerly embraced. But this figure remains careful to disclose his disillusionment with his own handiwork only in off-the-record conversations. Yet another Bush legal official, even now at the commanding heights of power, admits that the administration's policies are

largely discredited. In its defense, he says without a hint of irony or sarcasm, "Not everything we've done has been illegal." He adds, "Not everything has been ultra vires" – a legal term referring to actions beyond the law.

The resistance within the administration to Bush's **torture** policy, the ultimate expression of the war paradigm, has come to an end through attrition and exhaustion. More than two years ago, Vice President Dick Cheney's then chief of staff I. Lewis "Scooter" Libby and then general counsel David Addington physically cornered one of the few internal opponents, subjecting him to threats, intimidation and isolation.