

The secret government of Dick Cheney: US vice president claims to be outside the law

Patrick Martin
23 June 2007

The office of Vice President Dick Cheney has refused to comply with an executive order issued by President George Bush four years ago, requiring all executive branch offices to cooperate in regular reviews of their security procedures for handling documents.

After the security office of the National Archives and Records Administration (NARA), charged with conducting the review, pressed the issue, Cheney and his aides tried to have the office abolished and sought to gag officials of the National Archives by barring them from appealing the dispute to the Department of Justice.

Even more extraordinary than the fact of this conflict within the executive branch—made public Thursday with the release of documents by the House Committee on Oversight and Government Reform—is the constitutional rationale advanced by the vice president.

According to Cheney, the office of the vice president is not “an entity within the executive branch,” as specified in the language of the executive order, because the vice president serves constitutionally as the presiding officer of the US Senate, with a tie-breaking vote, and therefore has legislative power as well.

The sophistry of this argument is plain: in case after case over the past seven years, Cheney has invoked “executive privilege” or similar doctrines to shield his office from congressional investigations and Freedom of Information Act requests from the media and liberal pressure groups.

The most famous case involved the energy task force, formed in the initial weeks of the administration, and engaged, among other activities, in poring over maps of the oil fields in Iraq and the concessions awarded to non-US oil companies—all subsequently canceled after the US invasion.

Cheney refused to release any information about his energy task force after a request was filed by the Government Accountability Office, the investigative arm of Congress, citing the necessity for complete confidentiality in internal executive branch deliberations. He rejected similar requests from the media and environmental groups, filed under the Freedom of Information Act, and this position was upheld by a right-wing judicial panel.

But after rebuffing Congress’s request for information, on the grounds his office is part of the executive branch, Cheney is now refusing to comply with a similar request for information from an executive branch agency, on the grounds that he is really part of Congress!

What underlies this apparent Catch 22 is a sinister political logic: Vice President Cheney is not to be held accountable to anyone—not Congress, not the executive branch—a position so unprecedented in US political history that reporters at a White House press briefing Friday were compelled to ask whether Cheney had now set himself up as a “fourth branch of government.”

The vice president’s office has long been the focal point of the Bush administration’s drive to utilize the 9/11 terrorist attacks as the pretext for establishing the framework for a police state in America. In the weeks after 9/11, Cheney virtually disappeared from public view, conducting his activities at an “undisclosed secure location,” which turned out to be the headquarters of what became known as the “shadow government.”

Under the program, officially described as an exercise in “continuity of government,” supposedly a precaution against a terrorist nuclear strike on Washington DC, dozens of top executive branch officials were designated for redeployment to bunkers in the Appalachian Mountains from which they would direct government operations without reference to the legislative or judicial branch, which were excluded from the effort. (See the WSWWS editorial board statement, “The shadow of dictatorship: Bush established secret government after September 11.”)

Cheney’s chief counsel, David Addington, now his chief of staff, is the principal proponent of a constitutionally spurious theory known as the “unitary executive,” which claims that since the Constitution gives the president authority over the executive branch, he can direct lower-level executive branch officials to disregard legislative mandates.

Addington was also the most hard-line defender of the “right” of the president to order the torture of prisoners in Afghanistan, Iraq, Guantánamo Bay and at secret CIA prisons around the world, and he spearheaded the removal of military lawyers who objected to the policy of disregarding the Geneva Conventions for prisoners at US detention camps.

So sweeping are the claims of the vice president’s office that even the White House seemed to have difficulty absorbing them. At a Friday press briefing, White House spokeswoman Dana Perino parroted the language of Cheney’s aides in asserting that the vice president’s office was in compliance with the law, but she gave an entirely different legal argument.

The executive order on security procedures did not apply to the president himself, she claimed, and the vice president’s office shared in that exemption. The vice president was not intended to

be separate from the president in this regard.

When reporters pointed out to her that Cheney's office was claiming something entirely different, that he was exempt because of his constitutional connection to Congress, not to the president, Perino simply declared the issue "interesting" and referred all follow-up questions to Cheney's office.

Cheney's office actually complied with the requests for documentation by the National Archives and Records Administration in 2001 and 2002. But since 2003, i.e., once the war in Iraq had begun, the vice president's staff has not cooperated with the NARA or even replied to its annual requests.

The timing is significant, because in May-June 2003, in response to mounting criticism of the invasion of Iraq and the failure to find any trace of weapons of mass destruction—the pretext for the war—Cheney spearheaded a counteroffensive by the Bush administration that involved the systematic leaking of classified documents to journalists selected for their friendliness to the administration and willingness to serve as its conduits.

Among these were Judith Miller of the *New York Times*, the principal fiction writer in the "Iraqi WMD" media campaign, and columnist Robert Novak, who made public the covert CIA identity of Valerie Plame Wilson, the wife of former ambassador Joseph Wilson, who emerged at that time as a public critic of the administration's case for war.

It was revealed in the course of the trial of Cheney's former chief-of-staff, I. Lewis Libby, that Cheney had given Libby authorization to leak portions of a classified National Intelligence Estimate on Iraq to Miller and other journalists. It is likely that Cheney gave direct orders to expose Valerie Plame Wilson in order to punish her husband, but Libby has kept his mouth shut on that subject despite his conviction for perjury and obstruction of justice, and an imminent jail term of two-and-a-half years.

Ultra-right-wing figures in the Republican Party and the media have launched a frenzied campaign for Bush to pardon Libby before he begins serving his prison term—likely to be in August—at least in part because of concern that Libby may feel compelled to turn against his former boss.

Democratic Congressman Henry A. Waxman of California, chairman of the House committee, referred to the Libby case in an eight-page letter to Cheney made public Thursday evening. "Your office may have the worst record in the executive branch for safeguarding classified information," he wrote, citing also the case of a lower-level Cheney aide, a Filipino-American, who supplied classified documents to military officers in the Philippines who were plotting a coup against President Gloria Macapagal Arroyo.

Waxman's letter demands a response by Cheney to a series of questions, beginning with the basis for the claim that the office of the vice president is not bound by Executive Order 12958, the secrecy measure issued by Bush in 2003, and including this inquiry: "Is it the official position of the Office of the Vice President that your office exists in neither the executive nor legislative branch of government?"

"He's saying he's above the law," Waxman told reporters. "I don't know if he is covering something up or not, but ... when somebody refuses to make this information available, you wonder what they don't want the inspectors from the National Archives to

know."

Waxman went on to describe Cheney's position as "very dangerous" and "ridiculous," but he did not suggest that any serious action by the Democratic-controlled Congress was warranted. Like the rest of the House and Senate Democratic leadership, Waxman put impeachment of Bush and Cheney off the agenda as soon as the Democrats regained control of Congress in the November 2006 elections.

The refusal to cooperate with the NARA is a comparatively minor element in the flagrant lawlessness of the Bush-Cheney administration. This is a government that has defied international law by organizing the invasion and conquest of two sovereign nations, and that claims the right to arrest and detain anyone in the world as part of its "war on terror." Meanwhile, its definition of "terrorist" is so elastic that it has already been applied to unarmed American citizens arrested thousands of miles from any battlefield.

The House committee released the documents only two days after the Government Accountability Office (GAO) released a study on the White House practice of issuing "signing statements" when the president signs a bill into law, specifying what portions of the legislation he intends to enforce and what he will not. These statements are flagrant violations of the Constitution, which gives the president only the power to veto an entire bill, not pick and choose what he wants.

The GAO report examined 19 signing statements, finding that in 10 cases the executive branch enforced the law, in six it did not, and in three the issue was moot because the law required no specific action. This included some major congressional mandates, including the provision in the 2006 military appropriations bill that the Pentagon give a detailed accounting of the cost of the wars in Iraq and Afghanistan in its 2007 budget request. The Federal Emergency Management Agency likewise defied a requirement that it submit a plan for housing assistance for the victims of Hurricane Katrina and assess the failure of its previous efforts in that field.

House Judiciary Committee Chairman John Conyers, who requested the GAO study, declared, "The administration is thumbing its nose at the law." But Conyers, like Waxman, has shelved the question of impeachment, although he himself introduced an impeachment resolution in 2005 citing the lies told to the American people in the run-up to the invasion of Iraq.



To contact the WSWS and the
Socialist Equality Party visit:

wsws.org/contact