Cheney of Command

Ask the veep which laws bind the White House.

By James Bovard

THE BIGGEST SURPRISE from the shooting of Harry Worthington was Dick Cheney's announcement that he is entitled to declassify national security secrets. Such declassifications raise the question of whether the president and vice president possess unlimited discretion to manipulate the information Americans receive. And if Cheney does not actually possess the new prerogative he claims, he could risk impeachment if he invokes this power as a shield in the trial of his former chief of staff.

Near the end of the softball interview on the Worthington shooting, Brit Hume asked Cheney: "Is it your view that a vice president has the authority to declassify information?"

> **CHENEY:** There is an executive order to that effect.
> **Q:** There is?
> **CHENEY:** Yes.
> **Q:** Have you done it?
> **CHENEY:** Well, I've certainly advocated declassification and participated in declassification decisions. The executive order—
> **Q:** You ever done it unilaterally?
> **CHENEY:** I don't want to get into that. There is an executive order that specifies who has classification authority, and obviously focuses first and foremost on the President, but also includes the Vice President.

Hume had asked Cheney about the upcoming trial of Scooter Libby. Cheney replied, "It's nothing I can talk about. ... I may well be called as a witness at some point in the case. And it's, therefore, inappropriate for me to comment …"

Cheney may have uncorked this surprise in response to the revelation in court papers the week before that Libby had "testified that he was authorized to disclose information about the NIE [National Intelligence Estimate on Iraq] to the press by his superiors." This NIE contained the soul of the allegations about Iraqi WMD that the Bush team invoked to justify attacking Saddam. At the time Libby leaked the information to journalists, the report had not been declassified. There is no evidence that Libby was taking orders from the secretary of agriculture or even the postmaster general, so "superiors" means Dick Cheney. (Cheney has never been accused of a laissez-faire management style.)

Cheney claims he is authorized to disclose secrets because of Executive Order 13292, issued by Bush just after the invasion of Iraq. This order amends an executive order issued by President Clinton in 1995 governing national-security information. Bush's executive order greatly increased the prerogative of the vice president to lock away information from public view. It was largely ignored at the time because most of the American media were embedded, at home and abroad, in the glorious race to Baghdad.

But, though Bush did greatly expand Cheney's prerogative to classify information, there was nothing in the executive order that specified that the vice president can declassify secrets on his whim. As Steve Clemons of the New America Foundation observed, "the rules and processes for *classifying* national security information are completely different than *declassifying* information." The agency that classifies information presumptively has jurisdiction over declassifications. Eugene Fidell, a Washington lawyer, told NPR, "You have to ask who the original classification authority is. And under the executive order that Mr. Bush issued, the declassification authority is either the official who originally classified or the successor in office of that official or a supervisory official of either one."

Perhaps the vice president assumes that the power to classify automatically includes the power to declassify—the same way that the president's right to start a war naturally includes the right to make peace. But this interpretation scorns established laws and procedures. Attorney Mark Levey observed, "Cheney would have first had to request that George Tenet authorize Agency declassification. There is no record that such permission was ever sought or obtained." Levey concluded that Cheney violated the law by authorizing the disclosure of confidential information: "There is no murky presidential delegation of powers, as has been suggested by some, that might change that fact."

Also, there is a specific federal law—enacted at the behest of George H.W. Bush—that makes it a crime to disclose the name of an undercover CIA agent. Because an executive order cannot overturn a law of the land, Order 13292 can provide no safe harbor for either Cheney or Libby.

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The "my wish is the law's command" attitude towards disclosure and secrecy has permeated the Bush administration. From shortly after 9/11, the Bush team sought to drop an Iron Curtain around the federal government. Attorney General John Ashcroft issued a ruling severely weakening the Freedom of Information Act in October 2001. The following month, Bush issued an executive order that makes it far more difficult for the public to gain access to presidential papers. The administration took an extreme position in the confidentiality of Cheney's Energy Task Force, and the Supreme Court swallowed the argument. Jay Leno lampooned the Bush administration's view of separation of powers: "That means that people who don't have any power shouldn't be allowed to find out what the people who do have power are doing."

Yet when it serves Bush's interests, information is speedily disclosed. While Bush battled for almost two years to prevent Congress or the 9/11 Commission from seeing the President's Daily Brief from Aug. 6, 2001—warning that bin Laden was planning to attack the United States—hand-picked Bush biographer Bob Woodward was shown copies of other President's Daily Briefs.

Bush administration disclosures of sensitive information are often handed on a silver platter to pliant journalists the same way that Cheney chose Fox News for his post-shooting interview. *Newsweek*'s Richard Wolffe explained the Bush White House *modus operandi*: "They declassify when they feel like it. I've been with senior administration officials who have just decided to declassify something in front of me because it's bolstering their argument." *New York Times* columnist Maureen Dowd, who labeled Cheney "the Great Declassifier," noted, "the entire Iraq war was paved by its leaks. Cheney & Co. were so busy trying to prove a mushroom cloud was emanating from Saddam's direction, they could not leak their cherry-picked stories fast enough."

Bush administration officials sometimes deceive people when selectively disclosing information. Judith Miller agreed to portray Scooter Libby as a "former congressional staffer" instead of saying that he was in the White House or working for the Bush administration. As the *Boston Globe* noted, "Declassifying information for the purpose of sharing it with trusted journalists who then attribute it to anonymous sources taints the process and provides yet more proof that the disclosure was politically motivated."

From his endless false claims about a meeting in Prague between 9/11 hijacker Mohamed Atta and Iraqi government officials to his brazen and false denial that he had ever met John Edwards before their vice-presidential debate to his assertions that all those locked up at Guantanamo are "bad people" (despite U.S. government findings to the contrary), Cheney has never let facts stand in the way of political aggrandizement. Extreme secrecy gives him a right to trample the truth and then hide the corpse.

The more information the government withholds, the easier it becomes to manipulate public opinion with whatever "facts" government does release. The government tilts the playing field in favor of ignorance and then, with well-timed revelations, stampedes the media in the direction it wants them to go.

If Cheney's interpretation of the law is correct, then there is no limit to the amount of mischief he could inflict. Here we have the most powerful vice president in American history and someone full of venom for critics and anyone who does not support his warmongering. The federal government is vacuuming up far more personal information on Americans than ever before. If Cheney is entitled to leak the identify of an undercover CIA agent, there is no reason he could not leak information about other critics of his policy—regardless of whether such leaks violate privacy laws or other prohibitions.

The views on secrecy and selective leaking are keystones to the Bush-Cheney view of presidents' right to absolute power. Cheney's new chief of staff, David Addington, champions the doctrine that the president is above the law. Rep. Jane Harman, the top Democrat on the House Intelligence Committee, has heard Addington's comments on presidential power and torture during classified briefings; Harman told the *Washington Post* that Addington "believes that in time of war, there is total authority for the president to waive any rules to carry out his objectives." Addington was heavily involved in writing the 2002 memo on torture that revised the American political catechism by proclaiming, "criminal statutes are not read as infringing on the president's ultimate authority." Addington has been very aggressive against State Department and Pentagon officials who opposed torture. He may also be heavily involved in thwarting congressional oversight or investigations of the National Security Agency wiretaps that Bush ordered.

Perhaps it is time for someone to ask Cheney what, if any, laws still apply to the vice president. Cheney made it clear in his speech to the Conservative Political Action Conference that the Bush administration aims to use its warrantless wiretapping as a bragging point in this year's congressional campaigns. Does the rule of law, 2006, now mean that whatever rules the president or vice president proclaim are the law of the land? ■

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Race War Behind Bars

In Los Angeles prisons, Mexican gangs target black inmates.

By Roger D. McGrath

THE RACIAL VIOLENCE that has plagued Los Angeles County, particularly South Central Los Angeles and the adjacent city of Compton, has erupted in the county jails. In the lockups, Mexicans and other Latinos outnumber blacks by two or more to one and have used their advantage to control life on the inside. Any black transgression is met with retaliation whenever the opportunity presents itself.

Such occurred on Saturday afternoon, Feb. 4, at one of the several jail facilities at the Pitchess Detention Center near Castaic, when Latino inmates launched an attack—apparently to avenge the stabbing of a Mexican by blacks two days earlier at the Men's Central Jail in downtown Los Angeles—by throwing metal bed frames, mattresses, and other objects from the upper level of a jail dormitory onto blacks below. The fighting soon became hand-to-hand, occasionally prison-crafted weapon-to-weapon. The brawling continued for four hours and involved more than 2,000 inmates. Some 200 were seriously injured. One was killed. Although the sheriff's department did not release information on the racial identity of those injured, word has it that blacks got much the worst of it. The dead inmate was Wayne Tiznor, a 45-year-old black man who had previously served time for rape and was back in the joint for violating parole by not registering with local police as a sex offender.

The fighting ended only after the jail's regular guards were reinforced by more than 200 deputies rushed in from around the county to the detention center, 40 miles north of Los Angeles. The deputies fired tear-gas canisters, flash-bang grenades, and rubber bullets into the mass of brawling inmates.

Los Angeles County Sheriff Lee Baca proffered several reasons for the violence in the county's jails but revealed the obvious when he ordered the immediate segregation of brown and black prisoners who together comprise 90 percent of the inmate population. Thus far, whites have stayed out of the brown-on-black attacks.

Racial segregation—at least when conditions made it practical—had been the policy of county jails in Los Angeles since fights between Latinos and blacks became ever more frequent during the 1990s. In February 2005, however, the U.S. Supreme Court ruled, in a case brought, ironically, by a black inmate of a California prison, that segregation based on race was unconstitutional. The Supreme Court allowed an exception only for "extraordinary circumstances required to maintain inmate safety."

With upwards of 10,000 inmates in several different jail facilities at the sprawling Pitchess Detention Center, Sheriff Baca's segregation order took several days to implement. Then, too, it is nearly impossible to separate prisoners by race at all times. This meant another two weeks of sporadic fighting and dozens more injured. The number of blacks hurt, according to one inside source, was more than double the number of Latinos. As the fighting continued and it became ever more impossible to deny or minimize the racial element, Baca began revealing what his intelligence sources had told him. Gang leaders on the outside, said Baca, "made phone calls to Hispanic inmates directing them to attack blacks. It was all directed to go down at a particular time Saturday. All the fighters were ready."

For several days following the outbreak of violence, fighting had been confined to the Pitchess Detention Center. Then, on Friday, Feb. 10, nearly 50 brown and black inmates at the Men's Central Jail went at it, the fighting occurring in individual cells. The cells often have six or more inmates each and, as at the detention center, Hispanics outnumber blacks two-to-one. Again, whites remained out of the brown-on-black assaults.

In one of the cells was Sean Anthony Thompson, a 38-year-old black repeat offender, who had arrived in jail only two days before when stopped for running a red light and found to have rock cocaine in his possession. In the cell also were another black and four Latinos. One of the Latinos evidently stayed out of the fighting. When deputies were able to subdue the brawling, Thompson complained of chest pains and shortness of breath. A short time later he was dead. "My brother was outnumbered," cried Trina Thompson. He was also morbidly obese, weighing something over 300 pounds, and suffered from high blood pressure. In addition to Thompson's death, 10 other inmates were

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