Cheney and the 'Schmittlerian' Drive for Dictatorship

by Edward Spannaus

On Jan. 3, 2001, nine months before the 9/11 terrorist attacks on the World Trade Center and the Pentagon, Lyndon LaRouche issued a blunt warning to a Washington, D.C. audience, that the incoming Bush Administration would attempt to impose dictatorial crisis-management rule, modeled on the Hitler regime in Nazi Germany. LaRouche singled out the nomination as Attorney General of John Ashcroft, a leading figure within the "conservative revolutionary" Federalist Society, as the clearest signal of the intentions of some in the incoming Bush-Cheney regime. "First of all," LaRouche warned, "when Bush put Ashcroft in, as a nomination for the Justice Department, he made it clear, the Ku Klux Klan was riding again. . . . Ashcroft was an insult to the Congress. If the Democrats in the Congress capitulate to the Ashcroft nomination, the Congress is finished."

LaRouche then got to the heart of the matter: "This is pretty much like the same thing that Germany did, on Feb. 28, 1933, when the famous *Notverordnung* [emergency decree] was established. Just remember after the Reichstag fire, that Göring, who commanded at that time, Prussia—he was the Minister-President of Prussia—set into motion an operation. As part of this, operating under rules of Carl Schmitt, a famous pro-Nazi jurist of Germany, they passed this act called the *Notverordnung,* the emergency act, which gave the state the power, according to Schmitt's doctrine, to designate which part of his own population were enemies, and to imprison them, freely. And to eliminate them. This was the dictatorship."

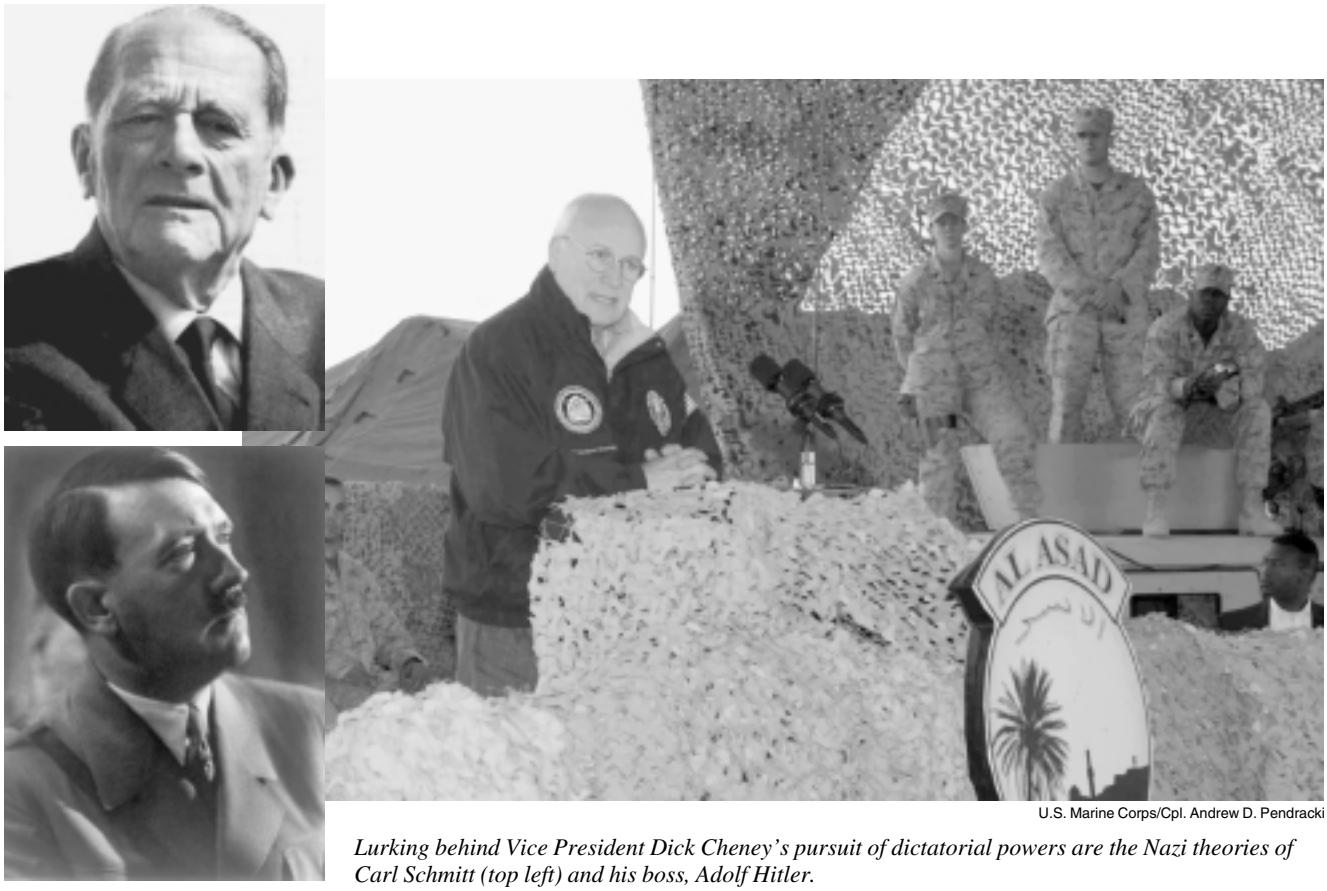
In prescient words, LaRouche continued: "We're going into a period in which either we do the kinds of things I indicated in summary to you today, or else what you're going to have is not a government. You're going to have something like a Nazi regime. Maybe not initially at the surface. What you're going to have is a government which cannot pass legislation. How does a government which cannot pass meaningful legislation, under conditions of crisis, govern? They govern in every case in known history, by what's known as crisis-management. In other words, just like the Reichstag fire in Germany.

"What you're going to get with a frustrated Bush Administration, if it's determined to prevent itself from being opposed, you're going to get crisis management. Where special warfare types, of the secret government, the secret police teams, will set off provocations, which will be used to bring about dictatorial powers, in the name of crisis management. You will have small wars set off in various parts of the world, which the Bush Administration will respond to with crisis management methods of provocation."

LaRouche emphasized, "You've got to control this process now, while you still have the power to do so. Don't be like the dumb Germans, who, after Hitler was appointed to

LaRouche Warned the Senate

The evaluation of the danger represented by the Bush Administration's nomination of John Ashcroft as Attorney General, which we quote here, was presented at length and verbatim by Lyndon LaRouche's National Spokesperson Dr. Debra H. Freeman, in written testimony to the Senate Judiciary Committee on Jan. 16, 2001. The testimony was included in the official record of the Senate, and therefore was available to all members of the U.S. Senate, from that time forward.



Library of Congress

U.S. Marine Corps/Cpl. Andrew D. Pendracki

Lurking behind Vice President Dick Cheney's pursuit of dictatorial powers are the Nazi theories of Carl Schmitt (top left) and his boss, Adolf Hitler.

the Chancellorship, in January 1933, sat back and said, 'No, we're going to defeat him in the next election.' There was never a next election—there was just this '*Jawohl*' for Hitler as dictator. Because the *Notverordnung* of February 1933 eliminated the political factor. . . ."

Returning to the Bush-Cheney team, LaRouche said, "I know these guys very well, because I've been up against them. . . . These guys, pushed to the wall, will come out with knives in the dark. They will not fight you politically; they will get you in the back. They will use their thugs to get you. That's their method—know it."

LaRouche next turned to the U.S. Supreme Court of Federalist Society godfather, Justice Antonin Scalia: "Given the implications of the grave financial crisis faced by the U.S.A. today, the crucial fact of greatest importance concerning Scalia's doctrines of law, is that his political and legal outlook is identical, on all crucially relevant points of comparison, to the legal dogmas used to bring Adolf Hitler to power during a roughly comparable period of grave financial crisis in Germany. Specifically, Scalia expresses the same explicitly Romantic dogmas of the pro-fascist 'conservative revolution' of G.W.F. Hegel, Friedrich Nietzsche, et al., which Scalia has imitated, in keeping with the model precedent of the so-called 'Kronjurist' of Nazi Germany, Carl Schmitt. That is the Schmitt who was the legal architect of the doctrine creating those dictatorial powers given, with 'finality,' to the Nazi regime of Adolf Hitler."

That was Jan. 3, 2001. Now five years later, Vice President Dick Cheney, the "Herman Göring" of the Bush Administration, has come out with the blunt admission that everything that LaRouche said back in January 2001 was true. On Dec. 20, while traveling to Oman on Air Force Two, the Vice President spoke to reporters, and delivered an unabashed defense of Carl Schmitt's *Führerprinzip* (Leader Principle) of absolute executive power. Cheney, facing a growing revolt from the Congress, the military and intelligence institutions, and the American people, against his over-the-top push for Presidential dictatorship and his promotion of Nuremberg war crime offenses, let it all hang out, admitting that he came into the Vice Presidency, fully committed to the imposition of rule-by-decree government.

"A lot of the things around Watergate and Vietnam, both, in the '70s, served to erode the authority, I think, the President needs to be effective, especially in a national security area," Cheney began. "If you want reference to an obscure text, go look at the minority views that were filed with the Iran-Contra Committee; the Iran-Contra Report in about 1987. . . . And those of us in the minority wrote minority views, but they

were actually authored by a guy working for me, for my staff, that I think are very good in laying out a robust view of the President's prerogatives with respect to the conduct of especially foreign policy and national security matters. . . . I served in the Congress for ten years, . . . but I do believe that, especially in the day and age we live in, the nature of the threats we face, . . . the President of the United States needs to have his constitutional powers unimpaired, if you will, in terms of the conduct of national security policy. That's my personal view.

"Either we're serious about fighting the war on terror or we're not. . . . The President and I believe very deeply that there's a hell of a threat, that it's there for anybody who wants to look at it. And that our obligation and responsibility given our job is to do everything in our power to defeat the terrorists. And that's exactly what we're doing."

Presidential Dictatorship: 'The Dark Side'

This view of unbridled Executive power as laid out by Cheney was shocking, even to many seasoned hands in the institutions of our government, especially for Cheney's total rejection of the post-Watergate reforms. It is a view that has been expressed in a number of obscure, and many still-secret, legal memoranda written in the past five years by a cabal of lawyers around Cheney, most of whom were groomed in the misnamed Federalist Society, but it has seldom been so openly expressed by the Vice President himself.

Five days after the 9/11 attacks, Cheney had hinted at what he was planning, during an appearance on NBC's "Meet the Press," when he declared that "lawyers always have a role to play, but . . . this is war." He elaborated his Hobbesian view:

"We also have to work, though, sort of the dark side, if you will. We've got to spend time in the shadows in the intelligence world. A lot of what needs to be done here will have to be done quietly, without any discussion, using sources and methods that are available to our intelligence agencies, if we're going to be successful. That's the world these folks operate in, and so it's going to be vital for us to use any means at our disposal, basically, to achieve our objective. . . . It is a mean, nasty, dangerous, dirty business out there, and we have to operate in that arena. I'm convinced we can do it; we can do it successfully. But we need to make certain that we have not tied the hands, if you will, of our intelligence communities in terms of accomplishing their mission."

At the same time that Cheney was talking about America's venture to "the dark side," the Vice President was attempting to bully the U.S. Congress into surrendering dictatorial powers to the White House—including the authority to spy on American citizens, without the legally mandated court orders. As the *New York Times* revealed on Dec. 16, 2005, within days of the 9/11 attacks, Cheney attempted to ram through Congress a war power resolution, granting carte blanche authority to use "any means necessary" both abroad and at home, to conduct the "war on terror." Sen. Tom Daschle (D-S.D.), the Senate Majority Leader at the time of the 9/11 attacks, blocked authority for domestic operations, and the Congress, as a whole, limited the President's war powers to actions against the perpetrators of the 9/11 attacks. Cheney and his gang of Federalist Society legal gun-slingers proceeded to ignore the Congress, and launched unauthorized surveillance and dirty tricks against American citizens, on a scale yet-to-be-revealed.

Already at that point—in fact, even before 9/11—Cheney and his hand-picked legal mouthpieces (David Addington, Timothy Flanigan, and John Yoo, in particular) wrote this into policy in the documents that have become known as the "torture memos." In order to get to "the dark side," they repeatedly claimed that any law or act of Congress which infringes on the "inherent authority" of the President as Commander in Chief to conduct war, is unconstitutional. It is the President, and the President alone, who decides what is necessary to defend the nation.

The Leader Creates the Law

This argument has a definite pedigree—even if its proponents, understandably, fail to footnote it.

It is called the *Führerprinzip,* and its foremost theorist was Carl Schmitt, known in his time as the "Crown Jurist of the Third Reich." Schmitt's theories have been undergoing a revival in the United States and elsewhere in recent years, so it is not surprising to see them popping up here.

Schmitt contended—as do Cheney's lawyers today—that, in times of crisis, legal norms are suspended, and the Leader, in this case, the President, both *is,* and *creates,* the law. "All law is derived from the people's right to existence," Schmitt wrote in 1934. "Every state law, every judgment of the courts, contains only so much justice, as it derives from this source. The content and the scope of his action, is determined only by the Leader himself."

The "theoretical" grounding for these arguments in the Nazi period, was provided by Schmitt, who contended that legal norms are applicable only in stable, peaceful situations, not in times of war when the state confronts a "mortal enemy." The Leader determines what is "normal," and he also defines "the state of the exception," when legal norms, and notions such as the separation of powers, and constitutionally guaranteed checks and balances, no longer apply.

When Bush and Cheney recite that "9/11 changed everything," they are mouthing the words of Hitler's Crown Jurist, Carl Schmitt.

The Federalist Society

How did these Schmittlerian arguments get laundered into the Bush-Cheney Administration?

Needless to say, the Administration's lawyers don't go around quoting Carl Schmitt—at least not by name. Whereas Schmitt labelled his theory of the all-powerful Leader, the

Führerprinzip, David Addington and the Federalist Society give it a different name: the "unitary executive."

This came to light in an Oct. 11, 2004 profile of Addington, written for the *Washington Post* by Dana Milbank.

"Where there has been controversy over the past four years, there has often been Addington," Milbank wrote, noting that Addington's views are "so audacious that even conservatives on the Supreme Court sympathetic to Cheney's views have rejected them as overreaching."

"Even in a White House known for its dedication to conservative philosophy, Addington is known as an ideologue, an adherent of an obscure philosophy called the unitary executive theory that favors an extraordinarily powerful President," Milbank continued.

The "theory" traces its origins to the Reagan Administration—and in time it coincided with the formation of the Federalist Society (which, to be historically accurate, would better be known as the Anti-Federalist Society). One of the founders of the Federalist Society, Steven Calabresi of Yale University, is also the foremost proponent of the unitary executive.

At its core, is the dogma that the President has as much right as, perhaps even more than, the Supreme Court, to interpret the Constitution, and that the President must brook no interference from the other two branches with his perogatives and powers. The President is entitled, indeed obligated, to disregard any laws he regards as unconstitutional (although this is, to be sure, a quite perverted meaning of what is "constitutional" and "unconstitutional").

In the Bush-Cheney Administration, under the direction of Addington and his clique, the doctrine has been applied to military and national security matters in an unprecedented manner, even to the chagrin of some of its proponents.

How It Worked

David Addington first surfaced as the Bush-Cheney Administration's latter-day Carl Schmitt two months after 9/11, when a number of military-linked lawyers told *EIR* of their anger over the President's Nov. 13, 2001 Military Order establishing military commissions to try suspected terrorists. They identified the almost-unknown Addington as one of those who blocked the views of the uniformed military, who were advocating sticking with the existing procedures under the congressionally enacted Uniform Code of Military Justice.

Although bits and pieces of the story came out over time, it wasn't until October 2004 that a comprehensive account was published about the battles around the military commissions; this was in the *New York Times* of Oct. 24 and 25, 2004.

The *Times* documented Cheney's specific role in crafting a scheme to bypass both the traditional military justice system, and the Federal courts, in order to create a system under which prisoners could be held indefinitely as "enemy combatants" and then eventually, perhaps, tried by military tribunals.

Cheney operated in secrecy, excluding uniformed military lawyers from the planning, and then, when a draft Military Order was prepared, even ordered it to be withheld from National Security Advisor Condoleezza Rice and Secretary of State Colin Powell.

EIRNS/Dan Sturman

The LaRouche Youth Movement, shown here organizing in New York City on Dec. 28, is demanding the immediate ouster of the Vice President for Torture, Dick Cheney.

While the 9/11 attacks were the pretext, the *Times* noted that the strategy was shaped by long-standing agendas—of expanding Presidential power and downgrading international treaty commitments—that had zero to do with fighting terrorism.

The core grouping of lawyers in the White House and Justice Department involved in crafting the new strategy were predominantly members of the Federalist Society, and most had clerked for Supreme Court Justices Antonin Scalia and Clarence Thomas, or for Appeals Court Judge Lawrence Silberman—a Federalist Society stalwart and architect of the campaign to bring down President Clinton in the mid-1990s.

The key planners, as identified in the *Times* article, were Dick Cheney (at the top of their chart), then Cheney's Counsel Addington, Bush's Counsel Alberto Gonzales, Gonzales's deputy Timothy Flanigan, and the Justice Department's Office of Legal Counsel. What the chart should have shown, was Addington and Flanigan running circles around Gonzales, a corporate lawyer who was way over his head in these matters. Excluded from the process were most of the government's experts in international law and military law.

The *Times* said that the idea of using military tribunals to try suspected terrorists came in a phone call from former Attorney General William P. Barr, to Flanigan, who had

worked at the Justice Department under Barr during the Bush "41" Presidency. Tribunals would give the government wide latitude to hold, interrogate, and prosecute suspected terrorists, with control of the entire process totally in the hands of the Executive, not the Federal Judiciary. "The same ideas were taking hold in the office of Vice President Cheney," the *Times* noted, and were being championed by Addington, described as a long-time Cheney aide with an undistinguished legal background.

The Justice Department's Office of Legal Counsel (OLC) worked up a plan to establish tribunals, ostensibly modeled on the one used by Franklin D. Roosevelt to try Nazi saboteurs in 1942—despite dramatic changes that had taken place since then, the most important of which were the 1949 adoption of the Geneva Conventions, and the 1951 enactment of the Uniform Code of Military Justice. Addington seized upon the outdated 1942 precedent, and was the most influential in pushing it through, because of the clout he had by virtue of representing Cheney. Top military lawyers offered proposals to shift the scheme closer to the existing military justice system; their suggestions were completely ignored. The OLC memo argued that the President could act unilaterally, bypassing Congress, by using his "inherent authority" as Commander in Chief.

Addington and Flanigan drafted the Military Order. On Nov. 10, Cheney chaired a meeting in the White House, attended by Ashcroft, Pentagon General Counsel William Haynes, and White House lawyers. Senior State Department and National Security Council officials were excluded, and Cheney advocated withholding the final draft from Rice and Powell. Cheney later discussed the order privately with President Bush over lunch, and the President dutifully signed it on Nov. 13.

As *EIR* was told at the time, military lawyers were furious at the President's order and at the bypassing of the court-martial system, fearing that the entire system of military justice would be tainted. The *Times* quoted Adm. Donald Guter, who has since retired as the Navy's Judge Advocate General: "The military lawyers would from time to time remind the civilians that there was a Constitution that we had to pay attention to."

Hunter-Killer Squads

That particular case study illustrates the way the process worked. But it would be much too sanitized, to just consider this as a question of what kind of trials to give captured terrorist suspects. The Administration's rejection of U.S. military law and the Geneva Conventions was the marker for a policy that intentionally and inevitably produced widespread torture and abuse of prisoners (officially referred to as "detainees"). Over 100 prisoners have died in U.S. custody, many from torture; the Pentagon has classified at least three dozen of these as criminal homicides.

Parallel to the creation of the President's Military Order in the weeks following 9/11, was a related process, to authorize CIA and military covert action programs which included "renditions," secret prisons, and the creation of hunter-killer squads to track down suspected terrorists to be captured or killed. Investigative reporter Seymour Hersh has provided the best description of this, emphasizing the role of Secretary of Defense Donald Rumsfeld and his deputy for intelligence, Stephen Cambone.

The *Washington Post* has focussed almost exclusively on the CIA's role in this, the latest example being a lengthy article published on Dec. 30, 2005, concerning the authorization of an expanded CIA covert action program after 9/11—precisely what Cheney was describing in his "dark side" remarks on Sept. 16, 2001. In fact, the next day, on Sept. 17, according to the *Post,* Bush signed a top-secret Presidential Finding which authorized the creation of hunter-killer teams and related covert programs.

And, the *Post* reported, when the CIA asked for new rules for interrogating key terrorism suspects, "the White House assigned the task to a small group of lawyers within the Justice Department's Office of Legal Counsel who believed in an aggressive interpretation of presidential power," while at the same time excluding from its deliberations lawyers from the uniformed military services, the State Department, and even the Justice Department's Criminal Division, which had traditionally been responsible for dealing with international terrorism.

Former CIA Assistant General Counsel, now a law professor, A. John Radsan, described the process to the *Post* as follows: "The Bush administration did not seek a broad debate on whether commander-in-chief powers can trump international conventions and domestic statutes in our struggle against terrorism . . . an inner circle of lawyers and advisers worked around the dissenters in the administration, and one-upped each other with extreme arguments."

The Addington/Gonzales Memo

The process of trashing U.S. laws and international treaties came to a head around the issues of the treatment of prisoners captured in Afghanistan and elsewhere. After these prisoners began arriving at the Guantanamo Bay prison camp in January 2002, there was still a debate within the Bush Administration over whether the Geneva Conventions would apply, which was not resolved until early February. The *New York Times* reported that around Jan. 21, while returning from a "field trip" to Guantanamo, Addington urged Gonzales to seek a blanket designation, declaring all prisoners at Guantanamo to be covered by the President's order on military tribunals. Gonzales agreed, and within a day, the Pentagon set into motion the procedures intended to prepare for military tribunals to try the Guantanamo prisoners.

It was publicly known at the time, that there was a fierce debate under way within the Administration, with Secretary of State Powell and the Joint Chiefs of Staff arguing for the

application of the Geneva Conventions. Amidst press reports of this raging dispute, Cheney went on two Sunday talk shows on Jan. 27, where he was asked about Powell's objections.

On ABC's "This Week," Cheney attacked Powell's position, asserting that "the Geneva Convention doesn't apply in the case of terrorism." He went on:

"These are bad people. I mean, they've already been screened before they get to Guantanamo. They may well have information about future terrorist attacks against the United States. We need that information, we need to be able to interrogate them and extract from them whatever information they have."

The debate over just what was permissible in order to "extract" such information, continued through 2002 and into 2003. At every point, it was Addington and Flanigan, working through the John Yoo and the DOJ Office of Legal Counsel, who pressed the Schmittlerian doctrine that the President as Commander in Chief (i.e., the Leader) could unilaterally determine which laws to obey, and which to disregard.

Planning for War Crimes

There is no question that they knew exactly what they were doing, and that they recognized that the actions they were proposing, constituted war crimes under U.S. and inter-

The 'Torture Trio'

White House/David Bohrer
David S. Addington

David S. Addington: Counsel to the Vice President, and now Cheney's Chief of Staff, replacing Lewis Libby, who resigned when he was indicted in late October 2005. Addington was Assistant General Counsel at the CIA from 1981-84, and then went to work for various Congressional committees; he hooked up with Cheney during their work together in the Minority for the Iran-Contra investigation. When Cheney became Secretary of Defense in 1989, under Bush 41, he brought Addington in as a Special Assistant, famously giving him an office adjacent to his own, which was normally occupied by a military aide. He was later promoted to General Counsel of the Department of Defense, where, according to military sources, he served as Cheney's personal hatchet-man, purging the ranks of the uniformed military of officers who resisted Cheney's commitment to the doctrine of preventive nuclear war. During the interregnum of the Clinton years, he worked for private law firms, and in the mid-1990s, he formed a political action committee which was Cheney's vehicle for exploring a Presidential bid.

Timothy E. Flanigan: As Deputy White House Counsel (i.e., Alberto Gonzales's deputy) during 2001 and 2002, Flanigan was a key player in all the discussions around detainee policy and in the development of the "torture memos." During the Bush 41 Administration, he was an Assistant Attorney General in the Justice Department's Office of Legal Counsel—the office responsible for advising the Executive Branch on the constitutionality of actions and legislation, and a stronghold of "unitary executive" proponents during Republican Administrations.

In September 2005 President Bush nominated Flanigan to be Deputy Attorney General, but he was forced to withdraw the nomination a month later because of both Flanigan's role in the torture memos, and his later role as General Counsel of Tyco International in 2003-04, where he supervised the lobbying activities of the now-indicted Jack Abramoff. Earlier, Flanigan had received over $800,000 from the Federalist Society in "consulting fees," ostensibly to write an "unauthorized biography" of Supreme Court Justice Warren Burger.

University of California, Berkeley
John C. Yoo

John C. Yoo: Although only a Deputy Assistant Attorney General in the DOJ Office of Legal Counsel, in the first three years of the Bush-Cheney Administration, Yoo wielded inordinate influence due to his close ties to Addington and Flanigan, to the chagrin of senior Justice Department officials, according to a report in the Dec. 23, 2005 *New York Times,* which also noted that he was able to bypass normal DOJ channels to send his memos directly to the White House. Yoo had clerked for Judge Lawrence Silberman at the D.C. Court of Appeals, and then Justice Clarence Thomas at the Supreme Court; both judges have been key figures in the Federalist Society, in which Yoo himself was extremely active. Having earlier come to Flanigan's attention, Yoo hooked up with Flanigan again on Bush's legal team in the 2000 Florida recount, whence Flanigan sponsored his appointment to the Justice Department's OLC.

national law. This is documented in their memoranda, which obviously were never intended to see the light of day.

According to the record as known so far, it was John Yoo who first raised the alarm that U.S. officials might be liable for criminal prosecution under the U.S. War Crimes Act. This was in a Jan. 9, 2002 memo, and his arguments were incorporated into a more formal Jan. 22 memo from the Office of Legal Counsel, to Gonzales and Defense Department General Counsel William Haynes. The memo asserted that "the President has plenary constitutional power" to suspend the operation of the Geneva Conventions.

Powell strongly protested, and in response to his objections, Addington drafted the Gonzales "Memorandum for the President" dated Jan. 25, in which he argued that the OLC's interpretation "is definitive."

Addington/Gonzales wrote to the President:

"As you have said, the war against terrorism is a new kind of war. It is not the traditional clash between nations adhering to the laws of war that formed the backdrop for GPW [Geneva Convention on Prisoners of War]. The nature of the new war places a high premium on other factors, such as the ability to quickly obtain information from captured terrorists and their sponsors and their sponsors in order to avoid further atrocities against American civilians. . . . In my judgment, this new paradigm renders obsolete Geneva's strict limitations on questioning of enemy prisoners and renders quaint some of its provisions. . . ."

But they didn't stop there. They pointed out that another advantage of such a determination, was that this "substantially reduces the threat of domestic criminal prosecution under the War Crimes Act (l8 U.S.C. 2441)." They continued: " 'War crime' for these purposes is defined to include any grave breach of GPW or any violation of common Article 3 thereof (such as 'outrages against personal dignity'). . . . Punishments for violations of Section 2441 include the death penalty."

Addington/Gonzalez went on to explain to President Bush why his determination that GPW does not apply, would guard against a "misapplication" of the War Crimes Act, and they noted that "it is difficult to predict the motives of prosecutors and independent counsels who may in the future decide to pursue unwarranted charges. . . ." They tried to reassure Bush, "Your determination would create a reasonable basis in law that Section 2441 does not apply, which would provide a solid defense to any future prosecution."

The 'Torture Memos'

The most atrocious of the "torture memos" was the Aug. 1, 2002 memorandum signed by Jay S. Bybee, the DOJ/OLC chief, entitled: "Standards of Conduct for Interrogations, under the Convention Against Torture and the U.S. Anti-Torture Act." It is this, which states that treatment may be "cruel, inhuman, or degrading, but still not produce pain and suffering of the requisite intensity" which would fall under the Federal Anti-Torture Act. This was defined as pain which is "equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of body function, or even death."

Addington's notable contribution to this memo, was his pressuring the OLC to include a strong section on the President's Commander-in-Chief powers. The memo concluded that a prosecution under the Anti-Torture Act "would represent an unconstitutional infringement of the President's authority to conduct war."

Another critical memorandum, still undisclosed, was discussed in a Nov. 14, 2005 *New Yorker* article by investigative reporter Jane Mayer. International lawyer Scott Horton has pointed to the memo, written by John Yoo, as reflecting the influence of Carl Schmitt.[1] Mayer wrote:

"A March 2003 classified memo was breathtaking, the same source said. The document dismissed virtually all national and international laws regulating the treatment of prisoners, including war-crimes and assault statutes, and it was radical in its view that in wartime the President can fight enemies by whatever means he sees fit. According to the memo, Congress has no constitutional right to interfere with the President in his role as Commander-in-Chief, including making laws that limit the ways in which prisoners may be interrogated."

There are numerous other examples of this same application of the Schmittlerian doctrine by Cheney, Addington, et al., some now disclosed, some yet to be revealed. But the point is clear.

Waiting for Carl . . .

Sept. 11, 2001 was clearly the moment that Cheney and his coterie of lawyers had been waiting and hoping for, the "exception" which would justify the suspension of the laws.

For Addington and the Federalist Society cabal, this was the culmination of two decades of struggle. For Cheney, it was more. As former White House Counsel John Dean revealed in his book *Worse than Watergate,* the issue of unrestricted Presidential power had been an obsession of Cheney since Cheney's days in the Ford White House of the mid-1970s, in the wake of Vietnam and Watergate, when Congress had set about dismantling the "imperial Presidency."

"Cheney has long believed that Congress has no business telling Presidents what to do, particularly in national security matters," Dean said. And, as Dean wrote and Cheney demonstrated in his Air Force Two interview, "Cheney still seems to resent these moves to bring the Presidency back within the Constitution."

Addington and the Federalist Society provided Cheney with a way to transform his anti-constitutional resentments into the closest thing to a Nazi-style dictatorship that America has ever experienced. It was a match made in Hell.

---

1. "The return of Carl Schmitt," www.balkin.blogspot.com, Nov. 7, 2005.