

SHALL, PART TWO?

Back in June, I pointed out that, in case of disputes over the EO guiding classification, the head of the Information Security Oversight Office can ask the Attorney General to rule on the dispute.

This morning, when I read the famous Executive Order that Cheney claims to have exempted himself from, I noticed a key paragraph:

The Attorney General, upon request by the head of an agency or the Director of the Information Security Oversight Office, **shall** render an interpretation of this order with respect to any question arising in the course of its administration. [my emphasis]

Yousee, I'm no lawyer, but I have written enough pretty hardcore business and government documents to know there's a crucial difference between "shall" and "should." Shall is mandatory, with legal umph. Should is kind of wishy-washy, if you feel like it, ought to. So I was wondering when the Democrats were going to point out to Alberto Gonzales that he **shall** provide a response to Bill Leonard's request for a ruling on whether or not Cheney is, indeed, exempt from this Executive Order.

AFAIK, AGAG never got around to ruling on the dispute before he got out of Dodge (though I'm happy to be corrected if I'm wrong). Which means the dispute remains at DOJ, just waiting for some resolution, right there for a new Attorney General to resolve it.

And Bill Leonard, who valiantly tried to make

Cheney follow Bush's own law, has just the month of December before his resignation goes into effect to try to get an answer to his dispute with Cheney. Curiously, none of the Senators asked Mukasey in his nomination hearings whether he might get around to answering Bill Leonard's question. Though I think I—and several other folks who hang around these parts—think that might have been the intent of this question from Sheldon Whitehouse.

2. Do you believe that the President may act contrary to a valid executive order? In the event he does, need he amend the executive order or provide any notice that he is acting contrary to the executive order?

ANSWER: Executive orders reflect the directives of the President. Should an executive order apply to the President and he determines that the order should be modified, the appropriate course would be for him to issue a new order or to amend the prior order.

It sure seems like, if Mukasey were asked whether he thought Bush could make Cheney into a Fourth Branch in order to exempt him from normal classification laws, he might answer that Bush would have to modify his executive order requiring Cheney to abide by the same requirements for revealing how much classifying he's doing that other agencies have to.

I'm just saying...