

SURELY THEY'LL RESORT TO PIXIE DUST ON THIS

MadDog linked to this while I was away at the dentist, but since I'm a big fan of both Secrecy News and of Bill Leonard, I wanted to highlight it in a post of its own.

Bill Leonard, who until Cheney chased him away last December, was the person overseeing the Information Security Oversight Office (making him one of the top people in the government overseeing the use of classification and declassification). He confirms what we've been saying: the classification surrounding the Torture Memo was improper.

"The disappointment I feel with respect to the abuse of the classification system in this instance is profound," said Mr. Leonard, who recently retired as director of the Information Security Oversight Office, which reports to the President on classification and declassification policy.

"The document in question (pdf) is purely a legal analysis," he said, and it contains "nothing which would justify classification."

Beyond that crucial fact, the binding technical requirements of classification were ignored.

Thus, he explained: **There were no portion markings, identifying which paragraphs were classified at what level. The original classifier was not identified on the cover page by name or position. The duration of classification was not given. A concise basis for classification was not specified. Yet all of these are explicitly required by the President's executive order on classification.**

"It is not even apparent that [John] Yoo [who authored the memo] had original classification authority," Mr. Leonard said.

"All too often, government officials simply assert classification. To enjoy the legal safeguards of the classification system, you need to do more than that. Those basic, elemental steps were not followed in this instance."

"Also, for the Department of Defense to declassify a Department of Justice document," as in this case, "is highly irregular," Mr. Leonard said.

(The DoD declassifier mistakenly cited "Executive Order 1958" on the cover page of the declassified memorandum. The correct citation is "Executive Order 12958, as amended.")

Violations of classification policy pale in comparison to the policy deviations authorized by the Justice Department memo, which was ultimately rescinded. Nevertheless, such classification violations are significant because they enabled the Administration to pursue its interrogation policies without independent scrutiny or accountability.

"To learn that such a document is classified has the same effect for me as waking up one morning and learning that after all these years there is a 'secret' Article IV to the Constitution that the American people did not even know about," said Mr. Leonard. [my emphasis]

As MadDog pointed out, these are some of the same issues we've been discussing in threads:

- The document should not have been classified "Secret"

- If it were to be classified "Secret," someone should have gone through and done a paragraph by paragraph analysis of what was "Secret"
- The memo lacked a number of other required items—original classifier, duration of classification, and rationale for classification
- DOJ was the owner of the document, but DOD declassified it
- Daniel Dell’Orto mis-cited the Executive Order by which he declassified the memo

I suspect we will learn there are reasons for all these irregularities of classification and declassification. Or rather, I expect the Administration will give us the same bullshit excuse every time someone points out that the whole damn executive branch is in violation of the executive branch’s own EO on classification and declassification. You see, according to the same OLC that wrote this bogus memo (and almost certainly, that means according to John Yoo), the Administration doesn’t have to abide by its own Executive Orders. (Though it should be noted, the Bush Administration revised the Executive Order in question within days of the publication of the Torture Memo, on March 23, which means it didn’t even comply with the brand new Executive Order written contemporaneously with the Memo!) So BushCo can do whatever it wants to do with classification and declassification, and then say, after the fact, "well, the President didn’t intend Bush Cheney John Yoo to have to follow the rules."

And voila! We're in the recursive position where John Yoo (probably) wrote an opinion allowing George Bush to throw Pixie Dust on his own Executive Orders so that John Yoo's shoddy legal opinions never see the light of day!

You like how that works?