

BUSH TURNED HIS EO ON CLASSIFIED INFORMATION INTO PIXIE DUST, TOO

Yesterday, I expanded on the reasons why the OLC opinion holding that Presidents aren't bound by their own Executive Orders is so scary. It means that every Executive Order may have been turned to Pixie Dust by the President—and we'd never know it.

Unless, of course, there were persistent, unpunished violations of what we believed to be the Executive Order. If there were an Executive Order that the Executive branch was publicly flouting, we might assume that Bush had turned that EO, too, into Pixie Dust.

And that is apparently what happened with EO 12958. It governs the treatment of classified information: what can be classified, when it should be declassified, what records one should keep of classification and declassification, and who can declassify classified information, and how classified information should be protected.

It's an EO that Vice President Cheney has had epic difficulties with.

In 2003, for example, Vice President Cheney (and the President's Foreign Intelligence Advisory Board) stopped providing the National Archives with data describing his office's classification and declassification activities. No explanation, he just stopped doing so.

Then, in 2004, the National Archives prepared to do an inspection of OVP, as it is mandated to do. Yet OVP refused to let the NA conduct the inspection.

Finally, when Bill Leonard of IS00 appealed to DOJ for a ruling on Cheney's refusal to submit to the plain text meaning of Bush's EO, he was told (six months later) that the EO had turned

to Pixie Dust. Specifically, he was told four years after the fact that President Bush did not intend for OVP to be an agency under the EO.

On July 12, 2007, the Counsel to the President wrote a letter to Congress stating that "[t]he President has asked me to confirm to you that ... the Office of the Vice President ... is not an 'agency' for purposes of the Order." ... That statement on behalf of the President resolves the question you presented to the Attorney General. Therefore, the Department of Justice will not be providing an opinion addressing this question.

Poof! Four years after Cheney stopped reporting his classification activities, three years after NA tried to do the original inspection, Bush got around to telling Bill Leonard that the plain text of the EO doesn't mean what it appears to mean. And Bush only told Leonard that news via Fred Fielding via Sam Brownback via Steven Bradbury. It took Congress threatening to withdraw funding from OVP before the President decided to tell **the guy whose job it is** that the EO at the center of his mandate doesn't mean what it appears to mean—and what he has understood it to mean for all the years he has done the job. As Leonard said via email:

I was not told that the Order was in some way being modified, I was told that the Order meant something other than what I (and others) thought a plain text reading would indicate, especially in the context in which it was originally developed.

You see how these Pixie Dust EOs can confuse issues?