

OPR ENDORSES PIXIE DUST

Back in January, Steven Aftergood sent a letter to the Office of Professional Responsibility outlining the absurdity of the Administration's claims that Cheney was exempt from normal rules on classified information.

The complaint makes a number of worthwhile points, including:

- *"Shall" means "have to"*
- *Fielding's letter didn't resolve the conflict*
- *Dana "Pig Missile" Perino's public statements—which Fielding cited in his own letter—didn't resolve the conflict*
- *"Person" of the Vice President is not the same thing as "Office" of the Vice President*

And, finally, this doozy: "not different" is not the same as "different":

What Mr. Fielding failed to recognize is that **some members of the President's office do report to the Information Security Oversight Office**. These include the President's National Security Advisor, the President's Science Advisor, and others.

So if the Vice President is "not different" from the President,

then at least some of the Vice President's staff would be expected to report their classification and declassification activity to IS00, as do some of the President's staff.

The executive order provides no basis for concluding that the President's National Security Advisor, for example, must report to IS00 every year, as he does, while the Vice President's National Security Advisor should not. That makes no sense at all. Yet this incongruous result reflects the Justice Department's failure to correctly analyze the requirements of the executive order, which is a professional lapse.

Alternatively, if the Vice President's National Security Advisor (among others) does not have to report to IS00, this would contradict the President's expressed intent that the Vice President is "not different" than the President for purposes of the executive order. It would mean that the President intended the Vice President's staff to receive less oversight from IS00 than does his own staff. Yet that is contrary to what the President's spokeswoman indicated. [my emphasis]

I guess this is the nonsense you get when you send Dana "Pig Missile" Perino to address matters of ontology.

Aftergood asked OPR to investigate whether the

OLC had acted improperly when it blew off Bill Leonard's request for clarification on the issue.

On Valentine's Day, OPR sent Aftergood a love letter in response, basically endorsing the Pixie Dust theory and telling Aftergood to embrace the Bush Administration in all its absurd glory.

In addition, this matter does not involve the allegation of affirmative malfeasance, but rather, the alleged improper failure to perform an act. It is important to note that the Executive Order, as amended, was issued pursuant to the current President's executive authority and the President has the power to modify or revoke such orders. Therefore, the President's interpretation of the order is particularly significant.

Which basically says two things. First, OLC can tell Leonard to go Cheney himself (literally) and that doesn't constitute real malfeasance. And second, Pixie Dust rules. Note, too, that it's not the President's interpretation that we're relying on when considering Cheney not an agency. It's actually Dana "Pig Missile" Perino's interpretation, offered via Sam Brownback via Fred Fielding. But I guess one Pig Missile = President these days.

And if that's not already enough for you, Aftergood notes this bit:

Finally, he suggested, if there are still questions of interpretation of the executive order that remain unresolved, "the ISOO may request an opinion from the Department clarifying the matter."

The Department's prior refusal to render such an opinion was the basis of the original complaint.

Joseph Heller would be proud.