

# WHITEHOUSE AND FEINGOLD STRIKE BACK AT PIXIE DUST

Pixie Dust, as I've explained it, is the process by which the Bush White House has relied upon an OLC opinion stating that the President doesn't have to rewrite his Executive Orders before he violates it. If he acts contrary to an Executive Order, that constitutes "modifying" the order, even if he never publicly changes the order. Hell, apparently in this White House, the VP could make up his own interpretations of Executive Orders, even if the White House Counsel told him he was wrong.

Uh huh.

Sheldon Whitehouse and Russ Feingold think that whole concept is as ridiculous as we think it is—and they've just sponsored a bill to end the practice.

U.S. Senators Russ Feingold (D-WI) and Sheldon Whitehouse (D-RI) have introduced legislation to prohibit the President from relying on one form of "secret law." The Feingold-Whitehouse bill would require public notice when the President modifies, revokes, waives, or suspends a published executive order or similar Presidential directive that carries the force of law and binds the Executive Branch. The legislation responds to a legal opinion of the Department of Justice's Office of Legal Counsel which concludes that a President can modify or waive an executive order without public notice, simply by not following it. This legal conclusion by OLC was made public in December 2007 through the efforts of Whitehouse and examined at an April 30<sup>th</sup> hearing of the Senate Judiciary Committee Constitution Subcommittee on the subject of "Secret

Law" chaired by Feingold.

"No one disputes a President's ability to withdraw or revise an Executive Order," Feingold said. "But modifying or even throwing out a published Executive Order without any public notice is a way of secretly changing the law. And since the Executive Order stays on the books, Congress and the public are misled about what the real law is. This bill is an important step toward stemming the growth of secret law in the executive branch."

"The Bush Administration's relentless efforts to conduct government in secret have undermined the rule of law and too often betrayed the trust of the American people," said Whitehouse, a former Rhode Island U.S. Attorney and Attorney General who first made OLC's conclusion public. "This measure will help restore the rule of law, disciplined by the balance of power established under the Constitution."

The bill, called the Executive Order Integrity Act, would require notice to be published in the Federal Register 30 days after the President revokes, modifies, waives, or suspends a published Executive Order. The notice would identify the Executive Order or portions thereof that were affected; whether the change that occurred was a revocation, modification, waiver, or suspension; and the nature and circumstances of the change.

"Executive Order Integrity Act"? That's not very colorful. I wonder if it's too late to get them to rename it the "Pixie Dust Prevention Act"?