

NOT THREE BRANCHES, NOT TWO BRANCHES, JUST ONE BRANCH OF GOVERNMENT

Just eight years ago, I remember our country having three independent branches of government. Apparently, the Mukasey DOJ has decided that three branch thing is quaint. In addition to sending Congress snotty letters telling them to back off the torture tape destruction, they've sent a similar letter to at least one judge.

OVERSIGHT OR POLITICS?

Michael Mukasey has engaged in a remarkable bit of sophistry with his refusal to clue Congress in on the joint DOJ/CIA IG investigation into the destruction of the torture tapes. He explains his decision as an attempt to avoid "any perception that our law enforcement decisions are subject to political influence."

Of course, the "political influence" Mukasey was asked to address during his nomination hearings was the kind exerted when a Senator or a Congresswoman called the Attorney General privately to demand that a USA either accelerate the prosecution of a political figure or be fired. In this matter, Mukasey has been asked to respond to what is an almost unparalleled degree of bipartisan support for an open inquiry into a matter that just stinks, already, of a cover-up. Leahy and Specter (and Reyes and Hoekstra and Durbin and Biden and more) called for a procedure that had oversight built in.

And Mukasey said no.

WHEN ALL EOS ARE PIXIE DUST, IT MEANS DICK CAN DECLASSIFY ANYTHING HE WANTS

The discovery that Bush can turn his own Executive Orders into Pixie Dust provides an explanation for one of the lingering mysteries of the Plame outing: the E0 governing declassification authority doesn't explicitly give the Vice President the authority to declassify information that he has not, himself, classified. But because the President always intended the Vice President to be treated as the President is in that Executive Order, it means Cheney has that authority contrary to the plain text meaning of the E0.

ALL YOUR DATA BELONG TO GEORGE

Guess what? ODNI has told Congress it doesn't want minimization procedures to be codified in statute because it would make it too hard to change those procedures. That, plus a continued emphasis on Executive Orders that George Bush can turn into pixie dust, suggests they really don't want to be held responsible for protecting US persons' privacy when conducting wiretaps.

NACCHIO'S HEARING-BEFORE THE JUDGES WHO GAVE HIM BAIL-SET FOR NEXT WEEK

I said yesterday that the lawsuits against the telecoms were the only means left for us to find out how the government spied on Americans. I forgot about Joseph Nacchio, whose appeal will be heard by the same folks who decided his appeal addressed a "substantial issue."

PHONE SLIP

One thing about the EFF document dump is immediately apparent. There is one trace—a phone slip—of any conversations between ODNI personnel and the phone companies.

DID THE D.O. LAWYER EVEN KNOW ABOUT BRINKEMA'S REQUEST?

Among the details in Isikoff and Hosenball's piece on the decision to destroy the torture tapes is a representation of DO's lawyer who advised the tapes could be destroyed which makes it sound like he had no clue there was an active inquiry for the tapes.

WE'RE NOT GETTING THE FISA OPINIONS ... WHICH LEAVES JUST THE LAWSUITS

Judge Bates, the same judge who rejected the Wilsons lawsuit against Dick and Libby and Karl and Dick, basically issued the same opinion he did in the Wilsons' suit: It's a great idea, but, no, not going to let it happen. All the more reason to figure against immunity for the telecoms.

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

Sheldon Whitehouse revealed that Bush has turned his Executive Order governing surveillance of Americans overseas into Pixie Dust. But that's not the only EO Bush has done that with; he also turned his EO governing the treatment of classified information into Pixie Dust. In fact, he didn't bother to tell the guy whose job it is to enforce that EO that it was Pixie Dust until four years after the fact!

WHEN ALL EXECUTIVE ORDERS TURN TO PIXIE DUST

Marty Lederman tells us not to worry about the legality of the OLC opinions Senator Whitehouse revealed last Friday. But he tells us we may need to worry about the constitutional bad faith that Whitehouse's revelations imply. This post begins a discussion about what happens when all the President's Executive Orders turn to Pixie Dust.