

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

Brit Hume once asked Dick Cheney whether he had declassified "information" in response to Joe Wilson's op-ed. Cheney claimed he had the ability under an Executive Order to declassify such "information."

HUME: On another subject, court filings have indicated that Scooter Libby has suggested that his superiors – unidentified – authorized the release of some classified information. What do you know about that?

CHENEY: There's nothing I can talk about, Brit. It's an issue that's been under investigation for a couple of years. I've cooperated fully, including being interviewed by a special prosecutor. All of it's now going to trial. Scooter is entitled to the presumption of innocence. He is a great guy. I worked with him for a long time. I have tremendous regard for him. I may well be called as a witness at some point in the case and it is therefore inappropriate for me to comment on any facet of the case.

HUME: Let me ask you another question. Is it your view that a vice president has the authority to declassify information?

CHENEY: There is an executive order to that effect.

HUME: There is.

CHENEY: Yeah.

HUME: Have you done it?

CHENEY: Well, I have certainly advocated declassification. I have participated in declassification decisions.

HUME: Have you –

(CROSSTALK)

CHENEY: I don't want to get into that. There's an executive order that specifies who has classification authority, and obviously it focuses first and foremost on the president, but also includes the vice president.

But the E0 in question—E0 12958 as modified by E0 13292—says no such thing. The modified E0 gives the Vice President to *classify* information.

The authority to classify information originally may be exercised only by:

(1) the President and, in the performance of executive duties, the Vice President;

But it didn't change the definition of "declassification authority," which only allows the originator of information or that person's supervisor to declassify already classified information.

(1) "Declassification authority" means:

(1) the official who authorized the original classification, if that official is still serving in the same position;

(2) the originators current successor in function;

(3) a supervisory official of either; or

(4) officials delegated declassification authority in writing by the agency head or the senior agency official.

In short, only George Tenet or his supervisor—George Bush—could declassify stuff that the CIA had originally classified. At least that was true before Bush could turn his own Executive Orders to pixie dust. Since Bush got authority to change his orders without telling us, we have no way of knowing what his Executive Orders actually say—mean.

Unless, of course, he bothers to tell us.

As it happens, the Bush Administration has told us (or, rather, they've told Sam Brownback, which I guess is as close as they're going to come to telling us), belatedly, what EO 13292 says means. In a letter to Brownback meant to clarify whether or not Dick is his own Fourth Branch of government, Fred Fielding directed Brownback to two press conferences Dana "Bay of Pigs = Missile Crisis" Perino for clarification on what EO 13292 says means.

The President has asked me to confirm to you that, as was made clear by the President's spokespersons on June 22 and June 25, 2007, the Executive Order deals with the President and the Vice President separately from agency heads and thus the Office of the Vice President, like the President's office, is not an "agency" for purposes of the Order.

And sure enough, back on June 22, Dana Perino did state that the Vice President, along with the President, is not an agency.

MS. PERINO: If you look at the EO, the President, in the performance of executive duties, and the Vice President are treated separately from agencies.

(She also appears to have suggested that Bush has duties that are not within the Executive Branch, but heck, while we're torching the rule of law, why not the Constitution?!?!?)

But Dana "Bay of Pigs = Missile Crisis" Perino said far more about what EO 13292 ~~says~~ means than simply clarifying that OVP is not an agency. Over and over, she stated that Bush intended to treat Dick just as he, the President, would be treated according to the EO. And while you're reading, note how closely Dana parrots the OLC opinion that says the President gets to make his own rules.

MS. PERINO: No, and I don't think that anyone has suggested that. I went back and I looked at this EO – I don't know if anyone else had a chance to actually read it. I think one thing is clear: first of all, it's the President of the United States who is the author of the EO, and is the sole enforcer of the EO, the executive order on classified materials. And it's clear from the reading of it, the Vice President is not treated separately from the President in the EO.

[snip]

MS. PERINO: If you look at the EO, the President, in the performance of executive duties, and the Vice President are treated separately from agencies. The President did not intend – I went back and looked into this – the President did not intend for the Vice President to be treated separately from how he would treat himself. Agencies are to report to ISOO, and they do. I don't think there's any suggestion that no one else is complying. The Vice President was not intended to be separate from the President in this regard.

[snip]

MS. PERINO: The President and the Vice President are complying with all the rules and regulations regarding the handling of classified material and making sure that it is safeguarded and

protected.

What is different is, regarding that small section of this ISOO office, that they are not subject to those – they are subordinate to the sole enforcer of the EO, which is the President of the United States, and they are not subject to such investigation – as I understand it, as I read the EO and as I had preliminary discussions in between the gaggle and today.

[snip]

MS. PERINO: That I don't know. All I know is what I have here, which is the executive order that was released in 2002, I think, did not intend to treat the Vice President any differently than he would treat the President.

[snip]

MS. PERINO: If you go back and you read the EO, it's – the President's intention was never to separate the Vice President out from himself. The President, as the sole enforcer of the EO, is instructing agencies on how to handle classified material on a range of issues.

[snip]

MS. PERINO: I think what is absurd is Chairman Waxman asserting some sort of authority over the President regarding an executive order, of which he is the sole enforcer.

[snip]

MS. PERINO: I didn't talk to him about that. I don't believe so. Especially since, as I just said in the EO, he's the sole enforcer of the EO, and he never intended for the Vice President to be treated separately from himself.

It's fairly clear what has happened: between the gaggle and the press briefing, Dana asked some questions, and someone explained to her that the President doesn't have to abide by his own rules—"he's the sole enforcer" of his EOs—and so it is presumptuous of Henry Waxman or anyone else to expect that Bush and Dick abide by the EOs Bush signed.

Though just in case you were wondering, contrary to the plain text meaning of the EO, Dana tells us that Bush intended for Dick to be treated the same as the President in the EO.

And that appears to apply to the whole EO.

So now we know why Dick told Brit that,

There's an executive order that specifies who has classification authority, and obviously it focuses first and foremost on the president, but also includes the vice president.

Because, Dana tells us, Bush didn't intend for the President and Vice President to be treated separately by the EO. In other words, somewhere in his kingdom of Pixie Dust, Bush has secretly given Dick the power to declassify anything the President can declassify (in addition to the classification authority Bush gave Dick explicitly).

Anything.

You all see where I'm going with this—but that's going to have to wait until the next post.