

JUST MAKING IT UP ON CLASSIFICATION

A number of you have pointed to smintheus' excellent post on Bush's new classification, Controlled Unclassified Information.

On Friday afternoon, with George Bush in Texas for his daughter's wedding, the White House finally released its new Executive Branch rules for designating and disseminating what used to be known as "sensitive" information. The most common term in the past for such material has been "Sensitive But Unclassified" (SBU), though there was an alphabet soup of competing classifications in various agencies. In part, the new rules create a uniform standard across the Executive by replacing SBU etc. with a new classification, "Controlled Unclassified Information" (CUI).

The Friday memo states that its purpose "is to standardize practices and thereby improve the sharing of information, not to classify or declassify new or additional information." The initial impetus for change came in a December 2005 memo in which Bush called for a new policy for information sharing between agencies. The alphabet soup of "sensitive" designations too often played into the hands of officials who sought to hoard information rather than to share it.

[snip]

Though the material to be regulated is nominally "unclassified", this new system is in fact a much more sweeping program for keeping information secret than the ostensibly higher grades of secrecy for "classified" material. And

at the same time, the system for designating "unclassified" information is in significant ways far less regulated than for "classified" information. This new memo represents the opposite of reform.

I agree with smintheus that this classification is simply an invitation for bureaucratic games that result in less information sharing rather than more.

But at the same time, with the increasing evidence that it doesn't matter what Bush says the classification guidelines are, key players in his Administration will just do as they please anyway, I'm not sure the CUI is the worst of our worries.

Consider the example offered by Bill Leonard in his statement for Russ Feingold's April 29 30 [thanks selise] hearing on Secret Law. Leonard focused most of his attention on the improper classification of the Yoo Torture Memo authorizing the military to torture; he offered quite a striking soundbite about the memo:

To learn that such a document was classified had the same effect on me as waking up one morning and learning that after all these years, there is a "secret" Article to the Constitution that the American people do not even know about.

But I found the details of Leonard's discussion even more interesting. He lists the several ways in which the classification of the memo violates the guidelines for classification (much of which he had already explained—as noted in this post).

- The original classifier of the memo was not identified
- The original classifier may not be one of the 4000

people authorized to
classify information

- The memo lacked
declassification
instructions
- The memo lacked an
explanation for why it was
classified
- The memo did not indicate
which portions of the memo
were classified and which
were unclassified
- DOD declassified a memo
apparently originally
classified by DOJ

But it was not just the original classifier and
eventual declassifier that violated the written
rules on classification. So did Jim Haynes,
Alberto Gonzales, and David Addington.

In addition, the memo was addressed to
the most senior legal official within
the DoD and was reportedly shared with
some of the most senior officials in the
Executive branch, including the then
White House Counsel as well as the then
Counsel to the Vice President. Like all
people with a security clearance, per
the President's direction in the
governing Executive Order, each of these
government officials had the affirmative
responsibility to challenge the
inappropriate classification of
information.

[snip]

... the President's governing Executive
Order makes it abundantly clear that
people who "classify or continue the
classification of information in
violation of [the] order or any
implementing directive ... shall be

subject to sanctions ... [to] include reprimand, suspension without pay, removal, termination of classification authority, loss or denial of access to classified information, or other sanctions..." There is no evidence to suggest that such sanctions have been imposed in this instance. Failure to apply sanctions makes it increasingly difficult to preserve the integrity and credibility of the classification system, a process that is an essential national security tool. [first ellipsis mine, remaining brackets and ellipses original]

If the Scooter Libby trial taught us anything (aside from the fact that Dick Cheney apparently ordered Libby to expose a CIA spy), it's that the Administration is not going to punish its own for violating rules on classification and declassification.

But Leonard's statement goes on to illustrate the fundamental hypocrisy of the Administration when it comes to classification. Leonard points out (as I also did) that all these fancy Administration lawyers violated the EO on classification they were writing even as they were improperly classifying the Yoo Torture Memo.

What is most disturbing is that at the exact time these officials were writing, reviewing, and being briefed on the classified nature of this memorandum, they were also concurring with the President's reaffirmation of the standards for proper classification, which was formalized the week after the OLC memo was issued when the President signed his amended version of the Executive Order governing classification.

Leonard is too polite to say it, but basically

the Administration was reiterating rules about classification for others that they had absolutely no intent of following themselves.

Such rank hypocrisy is only possible when you've got a lackey like John Yoo around to do your dirty business. As Leonard also points out, this improperly classified memo happened to be written by the same people who were responsible for interpreting that same EO on classification.

What is equally disturbing is that this memo was not some obscure, meaningless document written by a low-level bureaucrat who did not know any better and had inadequate supervision. Rather, the memo was written by the Deputy of the OLC, the very entity which has the responsibility to render interpretations of all Executive Orders, a responsibility that includes interpreting the governing order that distinguishes between the proper and improper classification of information.

Now I don't yet have proof that Bush's top lawyers formally used Pixie Dust to exempt themselves from the EO on classification even while they were writing it. Or whether they just don't care, whether they simply believe that rules are for other people and it doesn't matter what rationale they invent for ignoring their own rules, they'll find some way to squirm out of responsibility just as they did with the CIA Leak.

But one thing is clear. No one should accept a memo on classification from George Bush as anything more than a bunch of hypocritical posturing. This President doesn't give a damn what happens to information so long as he can selectively expose or hide information in ways that hurt his political enemies and hide his own law-breaking.

Update: transcription error fixed per MarkusQ.