

JOURNALISTS: ERIC HOLDER BELIEVES YOU'RE PROBABLY A CRIMINAL BUT WON'T CHARGE YOU

As I noted the other day, Eric Holder seems intent on calling journalists whom he believes are co-conspirators in a criminal leak something else.

Which is why I think this detail, from Politico's leaks-about-a-meeting-about-leaks story, is the most telling I've seen on the Holder meeting.

"The guidelines require a balance between law enforcement and freedom of the press, and we all argued that the balance was out of kilter, with the national security and law enforcement interests basically overwhelming the public's right to get information," one journalist at the meeting said. "The language concerning 'aiding and abetting' comes out of the Privacy [Protection] Act, and they discussed trying to revise that language so that reporters don't need to be defined as co-conspirators in order to execute search warrants."

This is a reference to part of the Privacy Act that prohibits the government from seizing media work product unless it is connected to a crime (see pages 5 ff for how it affected the James Rosen warrant application). After claiming Rosen was aiding and abetting a violation of the

Espionage Act and therefore his emails could be seized, the FBI then said that since he was potentially criminally liable, he should not get notice. In other words, the aiding abetting was an investigative tactic DOJ used to get around protections put into place just for someone like Rosen.

And DOJ's solution for abusing a protection meant to protect someone like Rosen is apparently to simply redefine the law, so it can overcome those protections without having to accuse Rosen of being a criminal.

The outcome would remain the same; DOJ would just avoid saying mean things about people associated with powerful media outlets.

But the letter Principal Assistant Deputy Attorney General Peter Kadzik sent to answer Bob Goodlatte and Jim Sensenbrenner's questions about Eric Holder's testimony about whether he ever prosecuted a journalist makes it clear he thinks James Rosen probably is a criminal, regardless of what he calls it.

When the Department has initiated a criminal investigation into the unauthorized disclosure of classified information, the Department must, as it does in all criminal investigations, conduct a thorough investigation and follow the facts where they lead. Seeking a search warrant is part of an investigation of potential criminal activity, which typically comes before any final decision about prosecution. Probable cause sufficient to justify a search warrant is different from a decision to bring charges for that crime; probable cause is a significantly lower burden of proof than beyond a reasonable doubt, which is required to obtain a conviction on criminal charges.

Note the slippage here: Kadzik says the standard for a probable cause warrant is different than the standard for charging, then says a probable cause warrant is different from the standard for convicting.

What Kadzik is implicitly suggesting is that while DOJ might think Rosen was a criminal co-conspirator, they'd never win their case against him. So they never considered charging him.

I joked some weeks ago that journalists should take solace in all this: Obviously, Eric Holder holds them in precisely the same category as banksters, those who are guilty of a crime but that DOJ chooses not to charge with one.

This letter seems to support this.