

IN DESCRIBING CIA'S ATTEMPTED INTIMIDIATION OF SENATE INTELLIGENCE COMMITTEE, HARRY REID USES THE WORD "UNPRECEDENTED" TOO

Back when Mark Udall first hinted about the CIA's efforts to intimidate the Senate Intelligence Committee, he said CIA had taken "unprecedented action."

That's language Harry Reid repeats in a letter to John Brennan informing him that the Senate Sergeant-at-Arms will conduct a forensic review of the SSCI computers.

You are no doubt aware of the grave and unprecedented concerns with regards to constitutional separation of powers this action raises.

The language Reid uses in a letter to Eric Holder is even stronger.

As Majority Leader of the Senate, I have a responsibility to protect the independence and effectiveness of our institution. The CIA's decision to access the resources and work product of the legislative branch without permission is absolutely indefensible, regardless of the context. This action has serious separation of powers implications. It is immaterial whether this action was taken in response to concerns about the Committee's possession of a disputed document; this stands as a categorically different and more serious breach.

[snip]

In my capacity as the leader of the U.S. Senate, the CIA's actions cause me great concern. The CIA has not only interfered with the lawful congressional oversight of its activities, but has also seemingly attempted to intimidate its overseers by subjecting them to criminal investigation. These developments strike at the heart of the constitutional separation of powers between the legislative and executive branches. Left unchallenged, they call into question Congress's ability to carry out its core constitutional duties and risk the possibility of an unaccountable Intelligence Community run amok. The CIA cannot be permitted to undermine Congress's ability to serve as an effective check on executive power as our nation's Founders intended.

For all the talk of interbranch conflict, however, the letter to Brennan includes hints of partisan conflict. He asks Brennan to keep his staffers away from Senate staffers except the Sergeant-at-Arms.

To ensure its [the Sergeant-at-Arms review] independence, I ask that you take whatever steps necessary to ensure that CIA personnel refrain from further interaction relating to this issue with Senate staff other than the Sergeant-at-Arms staff conducting the examination while the examination is underway.

This suggests there has been such contact. And there's no reason to believe anyone from the Democratic side would be working back channel with Brennan's spooks.

As I noted last week, the Republicans – especially Richard Burr, who would become Intelligence Chair if Republicans retake the

Senate – have been going after Mark Udall aggressively. In the interim we've seen fairly obvious hit jobs that use the CIA-SSCI dispute to focus on Udall's electoral prospects in November.

So while I believe everything Reid says about separation of powers – while I believe he regards this as an unprecedented threat to separation of powers – this also reeks of an attempt to prevent the collaboration of Republicans and the CIA.

We'll see whether it has the other probable goal: giving DOJ an easy way to back out of any entanglement in this dispute.