

SHELDON WHITEHOUSE AND THE RUSSIA INVESTIGATION DECONFLICTION

Laura Rozen has me worried.

She pointed to this CNN article – posted sometime this afternoon – describing Sheldon Whitehouse’s worries that the scope of the DOJ inquiry into Trump and Russia might conflict with the Congressional inquiries.

Sen. Sheldon Whitehouse, the top Democrat on a Judiciary subcommittee, told CNN Thursday that it’s possible Flynn is cooperating with the Justice Department – and that Capitol Hill has not been kept in the loop. He warned that congressional probes that have subpoenaed Flynn for records could undercut Mueller’s investigation if the former national security adviser is secretly working with the Justice Department as part of its broader investigation into possible collusion between Russian officials and Trump associates during the campaign season.

“There is at least a reasonable hypothesis that Mike Flynn is already cooperating with the DOJ investigation and perhaps even has been for some time,” said Whitehouse, a Rhode Island Democrat.

Whitehouse added he had no direct evidence to suggest that Flynn is cooperating with the Justice Department. But he said there is circumstantial evidence to suggest that it could be the case, saying Mueller must immediately detail the situation to “deconflict” with probes on the Hill to “make sure that congressional investigations aren’t

inadvertently competing with DOJ criminal investigations.”

[snip]

The Rhode Island Democrat said there are number of factors that suggest Flynn is working the Justice Department in its probe. He pointed out that “all reporting indicates they’ve got him dead to rights on a false statement felony” in his private interview with the FBI over his conversations last year with Russian Ambassador Sergey Kislyak. He also noted that Flynn has gone silent and retroactively signed on as a foreign agent to Turkey. And he noted that a federal grand jury has been summoned and has issued subpoenas to Flynn associates.

“So none of that proves anything but it’s all consistent with the hypothesis that he’s already cooperating,” Whitehouse told CNN.

“But that’s certainly a hypothetical case of a time when we do need need this de-confliction apparatus in place to make sure that congressional investigations aren’t inadvertently competing DOJ criminal investigations.”

Now, in point of fact, that deconfliction has already happened – or at least started. That’s what a May 11 meeting between Rod Rosenstein, Richard Burr, and Mark Warner was described as at the time.

Rosenstein was tight-lipped as he entered and emerged from a secure facility Thursday on Capitol Hill, where he huddled with Senate Intelligence Committee Chairman Richard Burr (R-N.C.) and Vice Chairman Mark R. Warner (D-Va.). The senators said the meeting had been scheduled before Comey’s ouster to discuss “deconfliction” – keeping the

FBI's and committee's investigations of alleged ties between the Trump campaign and the Russian government from stepping on each other's toes.

According to reports, the meeting was scheduled before the Jim Comey ouster, so it should reflect the scope of what he was investigating, and therefore presumably resembles the scope of what Robert Mueller will investigate.

But there are three reasons why Whitehouse might be justified in worrying that Congress might fuck up what DOJ is investigating.

Obviously, the first is Mueller: the Comey firing might have reflected some new investigative approach (including Flynn immunity), or Mueller, because of the firing, might be scoping the investigation differently.

A second is jurisdiction. Whitehouse and Lindsey Graham have assumed jurisdiction over the Russia investigation for their subcommittee – and the Senate Judiciary Committee obviously should oversee the FBI. So it may be that former US Attorney Sheldon Whitehouse wants to have a deconflicting conversation for himself, because he knows how investigations work (and for all we know is getting tips from DOJ).

The other is another announcement from this afternoon: that the Senate Intelligence Committee had voted to give Chair Richard Burr and Vice Chair Mark Warner the ability to issue subpoenas themselves going forward, without consulting the committee.

The leaders of the Senate Intelligence Committee now have broad authority to issue subpoenas in the Russia investigation without a full committee vote, Chairman Richard Burr (R-N.C.) said Thursday.

The panel voted unanimously to give Burr and Vice Chairman Mark Warner (D-Va.) the blanket authority for the duration

of the investigation into Russia's election meddling and possible collusion with President Trump's campaign.

The two Senate leaders must be in agreement in order to issue an order.

Now, as the article notes, thus far, the committee has asked for documents, not testimony. My suspicion is this might have more to do with ensuring Comey's testimony – promised after Memorial Day – is "compelled" in such a way that DOJ can't object.

Nevertheless, the power to subpoena does grant someone (like former Trump National Security Advisor Richard Burr) the ability to fuck with the DOJ investigation by potentially working at cross-purposes. To grant immunity (and therefore to fuck up the investigation as happened in Iran-Contra), I think Burr would still need the support of the committee.

Still, this still gives Burr far more power to thwart the investigation, with only Mark Warner (who unlike Whitehouse has never been a prosecutor) to prevent it.

In theory, I think Whitehouse is just pushing for jurisdiction (and for the ability to demand the same kind of deconfliction conversation Burr and Warner have gotten).

But upon reflection, I don't think his concerns are entirely unjustified.

In any case, I trust Whitehouse (with whatever leftover ties he has to DOJ) to do this review more than Mark Warner.

Update: Burr told Bloomberg he has had a deconfliction conversation with Mueller.

Senate Intelligence Chairman Richard Burr, a Republican from North Carolina, said he has contacted Mueller to discuss their parallel probes of Russian meddling.