

“TARGET:” A VOCABULARY LESSON FOR ADAM SCHIFF

Most of the people in top DOJ positions under Trump have issued statements claiming they did not know of any subpoena “targeting” Adam Schiff.

Billy Barr told Politico that “while he was Attorney General,” he was not aware of any congressperson’s records, “being sought” “in a leak case.”

Barr said that while he was attorney general, he was “not aware of any congressman’s records being sought in a leak case.” He added that Trump never encouraged him to zero in on the Democratic lawmakers who reportedly became targets of the former president’s push to unmask leakers of classified information.

Trump “was not aware of who we were looking at in any of the cases,” Barr said. “I never discussed the leak cases with Trump. He didn’t really ask me any of the specifics.”

That in no way serves as a denial that he’s aware of the previously collected congressperson’s records being used in an investigation, possibly one not defined as a leak case. Given that the records in question were collected over a year before he became Attorney General, it is, frankly, not a denial in the least.

WaPo includes purported denials from all three potential Attorneys General.

In February 2018, Jeff Sessions was attorney general, though a person familiar with the matter said he has told people he did not recall approving

a subpoena for lawmakers' data in a leak case. Sessions was recused from many Russia-related matters, including special counsel Robert S. Mueller III's investigation of the Kremlin's interference in the 2016 election. A person close to Rod J. Rosenstein, Sessions's deputy attorney general, said he, too, has told people he did not recall hearing about the subpoena until news of it broke publicly.

Two other people said William P. Barr – Trump's second attorney general – also has told people he did not remember being informed of any subpoenas for lawmakers' data during his time leading the department.

Barr says he does not remember being informed of "subpoenas for lawmakers' data." Jeff Sessions, who may have been recused from the investigation in question (though I'm virtually certain the recusal is not as broad as it is being treated), says "he did not recall approving a subpoena for lawmakers' leak data." And Rod Rosenstein, the leak hawk who served as Attorney General for Russia related investigations, says "he did not recall hearing about the subpoena" until it was just revealed.

Every single one of these denials is premised on this being a subpoena *for* Members of Congress. These denials are denials about *targeting* Members of Congress.

But Apple's description of what happened makes it virtually certain none of these denials are relevant to the subpoena in question.

On Feb. 6, 2018, Apple received a grand jury subpoena for the names and phone records connected to 109 email addresses and phone numbers. It was one of the more than 250 data requests that the company received on average from U.S. law enforcement each week at the time.

An Apple paralegal complied and provided the information.

[snip]

Without knowing it, Apple said, it had handed over the data of congressional staff members, their families and at least two members of Congress, including Representative Adam B. Schiff of California, then the House Intelligence Committee's top Democrat and now its chairman. It turned out the subpoena was part of a wide-ranging investigation by the Trump administration into leaks of classified information.

Apple was asked for the *names* and toll records connected with 109 accounts. That means that investigators didn't know – or could claim not to know – whose records they were collecting, and didn't discover until they got the subpoena returns that Adam Schiff, Eric Swalwell, and a child with no conceivable access to classified information had been included. Chances are good that none of these people *were* the target.

Chances are good that a staffer was the target – perhaps the one for whose records Microsoft was subpoenaed in 2017. This *sounds* like a Community of Interest subpoena – something that gets the calling circle of a target. It was a key part of Stellar Wind and the phone dragnet that Adam Schiff championed over and over again, a request that shows (in this case) two hops removed from a target to figure out whom he called and whom those people called.

The danger of using such requests in leak investigations has been known since a 2010 IG Report revealed that a journalist's records had been collected as part of a community of interest grand jury subpoena. One plausible explanation for what happened in that instance is that the government targeted a known source for Stellar Wind – perhaps Thomas Tamm – knowing full well that one of the journalists on the

story had been in contact with him. By getting two hops of records, though, the known contact with the journalist would (and did) return all the journalists' contacts as well. The journalist in that case wasn't the "target" but he may as well have been.

Still, as the phone dragnet championed by Adam Schiff reveals, the government never gave up their interest in such two-hop subpoenas.

All of the descriptions of what happened are consistent with this explanation. It would explain why:

- Apple didn't know the identity of the account holders but returned both the identity and the call records in response to the subpoena
- Apple is now limiting the number of records they'll return with one subpoena
- Sessions, Rosenstein, and Barr are all denying knowing that Members of Congress were "targeted"

What it doesn't explain – though no one has been asked to explain – whether investigators on this case alerted their superiors that they had ended up subpoenaing Adam Schiff's records, whether or not they [claim they] intended to. Oops, boss, I just subpoenaed the Ranking Member of HPSCI, what do I do now?

In the case of the journalist whose records were seized in a community of interest subpoena in 2006, after it was discovered the FBI sealed the records and they were purged from at least some of the FBI's investigative databases. That's what should have happened after a prosecutor discovered they had obtained a Member of Congress' call records unintentionally: the

records should have been sealed.

But by description, that didn't happen here. Barr *never denied* having focused on Members of Congress when he resuscitated his investigation in 2020 (nor has he said for sure that it remained a "leak" investigation rather than a "why does this person hate Trump" investigation, like so many others of his investigations. Barr denied telling Trump about it. But he didn't deny that Members of Congress were investigated in 2020.

That's why Adam Schiff's reassurances that Section 702 of FISA doesn't "target" Americans have always been meaningless. Because once FBI ingests the records, they can go back to those records years later, in an entirely different investigation. And no one has denied such a thing happened here.

Update: Fixed the description of Barr's denial to WaPo.