



Written by [Jack Kenny](#) on June 10, 2013

Attorney General Holder: “No Intention to Spy” on Congress

Attorney General Eric Holder (shown) offered to answer in closed session when asked in a Senate hearing if the executive branch had been monitoring the phone calls of members of Congress. The question was put to Holder by Senator Mark Kirk (R-Ill.) at a June 6 hearing of the Senate Appropriations Committee. The hearing was overshadowed by news the previous evening of the government’s daily collection of Verizon’s telephone records and the revelation that same day of the National Security Agency’s PRISM program for tracking the communications made through several of the nation’s largest telephone companies. The following [exchange](#) between Kirk and Holder received little more than passing mention in news coverage:



Sen. Kirk: Mr. Attorney General, I want to take you to, uh, the Verizon scandal, and which I understand takes us to possibly monitoring up to 120 million calls. You know, when government bureaucrats are sloppy, they’re usually really sloppy. So I want to just ask: Can you assure to us that uh, that no phones inside the capital were monitored, members of Congress, that would give a future executive branch, if they start pulling this kind of thing up, would give them unique leverage over the legislature?

AG Holder: Uh, with all due respect, Senator, I don’t think this is an appropriate setting for me to discuss, um, that issue. I’d be more than glad to come back, uh, in a — in an appropriate setting to discuss, uh, the issue that, that you have raised. But in this open forum, I don’t, I do not have a way to...

At that point, Kirk cut short Holder’s response.

Sen. Kirk: I would, uh, interrupt you to say, the correct answer would be [to] say, ‘No, we stayed within our lane, and I’m assuring we did not spy on members of Congress.

AG Holder: There has been no intention to spy on members of Congress and members of the Supreme Court.

It may or may not be revealing, but surely it is interesting that Holder mentioned the Supreme Court in that context. Clearly the attorney general wanted to discuss the matter, if at all, only behind closed doors, with the press and public shut out. And his carefully guarded statement that there has been “no intention” to spy on members of Congress leaves open the possibility that members may have come under surveillance by accident, which could happen easily enough. Given the number of calls involved, it’s quite likely phone numbers of members of Congress are included. And if members have spoken on



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the phone with a person or persons targeted in an investigation of a news leak about a foreign terrorist plot, then it's quite possible those conversations have been captured by a wiretap authorized by the FISA Court, which almost never refuses a government request for a warrant. As long as no representative's or senator's own phone was targeted, Holder's answer could be technically correct.

But the Justice Department last month seized the records of all the phone calls for a two-month period last year to and from the phone lines of 20 Associated Press reporters and three AP offices, along with the main line for the AP in the House press gallery. Surely some of those reporters had calls to and from members of Congress. And calls made to members of the House and Senate Intelligence Committees, who are briefed on classified information, would likely have caught the attention of the investigators. Senators Ron Wyden (D-Ore.) and Mark Udall (D-Col.) are on the Intelligence Committee and have [repeatedly sounded alarms](#) about the secrecy surrounding FISA Court interpretations of government surveillance powers under the PATRIOT Act, saying the public would be "stunned" to learn the extent of those powers. But would anyone be surprised if we were to learn the FBI had taken a special interest in the home and office phone numbers of those two senators and the numbers of those to whom and from whom they make and receive calls?

Sen. Kirk spoke of "unique leverage" the executive branch might have over the Congress if the legislators' phone calls were under surveillance. Such leverage is called, in common parlance, blackmail, and it could be useful whenever the administration sees a need to gain the support or silence the opposition of a member or members of Congress. And it might not be anything the actual member did that could cause legal problems or embarrassment if it were passed on to prosecutors or exposed to the public. In a [Washington Examiner column](#) this week, Gene Healy offered just one example of how that sort of thing worked in the heyday of the late FBI Director J. Edgar Hoover:

In his book *The Secrets of the FBI*, Ronald Kessler quotes one of the FBI director's former top lieutenants: "The moment [Hoover] would get something on a senator," he'd send an emissary to the Hill to "advise the senator that 'we're in the course of an investigation, and we by chance happened to come up with this data on your daughter.'... From that time on, the senator's right in his pocket."

Hoover was legendary not only for his anti-communism and crime-fighting, but also for using the vast amount of information collected by his agency as, in Kirk's phrase, "unique leverage" in rewarding political friends and punishing enemies, right up until his death in 1972. He has been gone for more than 40 years, but that doesn't mean all the techniques he developed and put into practice at the agency he ruled for half a century are buried with him. They may be alive and well in a more technologically advanced FBI in the [J. Edgar Hoover building](#) in Washington, D.C.

Photo of Attorney General Eric Holder: AP Images



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