

FORMER SENATORS SESSIONS AND COATS LIKELY JUST SET OFF A CONFLICT WITH CONGRESS

I'll have more to say about Jeff Sessions' new witch hunt on leaks later. But for now I want to look at what former Assistant Director Ron Hosko had to say to Daily Beast.

Ron Hosko, former deputy director of the FBI, said these changes could result in prosecution of members of Congress and Hill staffers. In the past, he said the FBI identified members of Congress who leaked classified information, who the Justice Department then declined to prosecute. Agents were often frustrated by this, Hosko added. Given the attorney general's announcement, he said, members of Congress and Hill staffers may be more likely to face prosecution.

As I was listening to the press presentation (I won't call it a conference because Sessions and Coats ran away without answering questions), I couldn't help but thinking what a shitshow these two former Senators were likely setting off.

That's because the universe of potential leakers is fraught for DOJ especially.

There are the various White House leakers (not including the President, who will escape notice even though he is one of the most prolific and dangerous leakers). Prosecuting them will be difficult politically in this contentious Administration.

There are the IC leakers. While some will likely be charged, a good many will be – like David Petraeus – too dangerous to aggressively

prosecute, because they know where the truly interesting secrets are.

Most of all, though, there are the current and former members of Congress and their staffers, who have clearly been a central source of leaks embarrassing the White House.

Hosko is right that FBI has bumped up against limits in prosecuting Congress before. In the Jeffrey Sterling case, for example, SSCI staff director Bill Duhnke was FBI's first and primary suspect (and a far more likely source for James Risen's 2003 story than Sterling, not least because the final form of that story included a seeming reference to Iraq that Sterling wouldn't have known). But SSCI refused to cooperate with the FBI investigation for years, and Duhnke reportedly never did. Duhnke remains in the Senate, working as the Rules Staff Director.

There's nothing the Sessions hearing today included that would change the circumstances of Congress' non-participation in the prosecution of Duhnke going forward (except perhaps the threat to jail journalists, but that's still not likely to be enough to get past Congressional Speech and Debate privilege.

Moreover, if the FBI pushes too hard, Congress will just legislate itself – and reporters – protections (as Congress has been threatening to do for some time).

Given the Fourth Circuit precedents tied to the Sterling case, I think it will be easier for FBI to go after low level IC staffers. But I'm fairly confident if it gets close to Congress there will be a significant backlash that will make former Senators Sessions and Coats regret they didn't account for their former colleagues' equities before rolling out a witch hunt.