

SHORTER RUPP: WE INFORM MEMBERS AT BRIEFINGS THEY CAN'T ATTEND BECAUSE THEY'RE TOO BUSY

Since it became clear Mike Rogers had chosen not to pass on the Administration's notice of phone dragnet problems, I've been wondering if he did the same with any notice about the FISA Amendments Act upstream problems.

In response to a query from Politico, Rogers and his counterpart Dutch Ruppersberger seem to suggest they did not pass on the notice.

Moreover, the House leaders who held the keys to the report did not loudly broadcast its existence to the rest of the chamber. The chairman of the Intelligence Committee, Rogers, and the panel's ranking Democrat, Dutch Ruppersberger of Maryland, declined to say whether they even had sent a letter in 2012 informing members there had been a critical document to view. Hill sources say they don't recall anything of the sort.

More telling still, though, is Rupp's justification for providing briefings instead of the actual white paper.

Party leaders did hold unclassified and classified briefings on FISA, but they occurred just days before the House's September 2012 vote to reauthorize the law. The Republican briefing, for example, occurred only two days before the House approved the FISA Amendments Act, according to an invite obtained by POLITICO. Yet nowhere in the message, sent Sept. 7, 2012, is any mention of

the White House white paper on FISA oversight – the document that detailed how the agency had erred in collecting U.S. communications.

Committee leaders, though, stress they acted appropriately. “Members were notified of the contents of the white paper through the briefing,” Ruppensberger told POLITICO. “We felt that a briefing was an appropriate way to notify members of this important issue so that they would have the opportunity to get all of their questions answered immediately.”

The congressman continued: “Some members chose to take advantage of a briefing and some did not. **We thought offering a briefing shortly before the vote was held would work best with members’ busy schedules and keep the issue fresh in their minds as they cast their vote.**”

[my emphasis]

In his explanation, Rupp explains that members have busy schedules.

And his accommodation for those busy schedules was to require members who want to be informed on issues they didn’t receive notice of adjust their busy schedule to show up at one of two briefings, rather than go to a SCIF to read a document during whatever time is most convenient for them. Indeed, I’ve heard from members that that’s part of the problem with briefings – they require people to drop all their other important issues and cater to Rogers’ and Rupp’s schedules, instead. All to learn about issues not identified in the meeting notice.

I’d add two points to the Politico piece. First, while it notes that the notice pitched the 2011 compliance problems as an example of functional oversight, there’s another problem with it. It doesn’t appear to reveal that some agency (probably FBI) already did, and the NSA newly

started searching on incidentally collected US person data. Thus, it left out one of the most crucial aspects of the 2011 opinion, that it permitted the access to US person communications without a warrant.

And then a persnickety issue. Politico makes this claim.

The Washington Post first revealed that lapse in PATRIOT Act oversight in August, which at the time Rogers acknowledged “very few members” had taken advantage of any related briefing opportunities.

As the reporter admitted he knew, the WaPo did not, in fact, “first” reveal the earlier failure to pass on the notice. The WaPo reporting followed my own and the Guardian’s, as well as several other sites. The whole issue of “first” is stupid, but why use it, particularly if you know it is factually inaccurate?