

JANE HARMAN RESPONDS

Jane Harman sent a response to this post via a staffer.

What rubbish!Â For those like me whoinsist that the Presidentâ€™s domestic surveillance program must complyfully with the Constitution and the 4th Amendment, the only way forCongress to get there is with a veto-proof majority.Â That's why I'mworking with Republicans.Â Got a better idea?

I opposed the FISA-gutting ProtectAmerica Act last August and supported the much-improved H.R. 3773,which did not include retroactive immunity for telecommunicationscompanies.Â I call on the White House to do more than share selecteddocuments with a handful of Senators â€” how do we know what the WhiteHouse is not providing?Â In my view, the question of retroactiveimmunity cannot even be considered until Congress is fully informedabout what happened and under what authority.

It's the same response she posted to drational's diary at DKos, which responds to the same WaPo passage I used, but takes a different approach than I did in discussing it.

Given that Harman is sending the same response to both drational and I, it's unclear what she means with her response. What, precisely, is rubbish? I can think of several things she might be labeling rubbish, but it's unclear which possibility she intended.

- The report from the WaPo, that Harman is "quietly

exploring avenues of compromise with Pete Hoekstra"?

- That, as the WaPo implied, Harman is among those centrist Dems who "hope those talks can dovetail with the Senate intelligencecommittee's own bipartisan measure on surveillance of suspectedterrorists"—which of course includes immunity for the telecoms?
- That her negotiations include the provision of immunity for the telecoms, something both drational and I implied—which I, at least, took to be a clear implication from the WaPo coverage, since it listed the SSCI bill as the basis for compromise?
- That she is bypassing HPSCI and HJC, which have been tasked by party leadership to come up with a revision to FISA, an assertion made by me but not by drational?
- That it is appropriate to consider primary challenges for someone who effectively turns us back into a minority party by working with Republicans on her own compromise rather than

working to build support for the bills supported by the party?

- That Harman, "appears to have been one of the only Democrats (if not the only Democrat) to have approved uncritically" of the domestic wiretap program, an assertion made by me but not by drational?
- That Harman, with Jello Jay and Pelosi, are "willing to compromise on every surveillance concession demanded by the White House," an assertion made by drational but not by me?
- That Harman and Jello Jay and Pelosi are seeking immunity for themselves, also an assertion made by drational and not by me?

Like I said, given her comments it's not clear what she's thinking. If she is saying it's rubbish that she was one of the only Dems to have approved uncritically of the program, I'd love to hear it, because every other Dem who was briefed on the program has either said they expressed criticism during the process or that the Administration allegations about "majority approval" don't include them.

And if Harman is trying to say that she is not, in fact, considering immunity in back channel discussions with Hoekstra—or even that those back channel discussions aren't going on—I'd love to know **that**, too.

But I will say this. Telecom immunity is an

issue about which Democrats might be able to withstand Administration demands. If its caucus goes along. Therefore I still object to back channel discussions—if they're taking place—if they put telecom immunity on the table.