

MIKE ROGERS' DOUBLE SECRET INVITATION TO DANCE

I'm working on a very weedy post on the White Paper's duplicitous presentation of what it calls support for Congress for the Section 215 dragnet.

But I'd like to compare a claim from this WaPo story on how secrecy makes it difficult for Congress to exercise oversight with a detail from the White Paper.

Rogers said "very few members" take advantage of his invitations to receive quarterly staff briefings on counterterrorism operations, and others skipped briefings on the NSA bulk surveillance.

"If you have individual members who say they don't have time to be on the intelligence committee, then I say get off the intelligence committee," he said.

Ruppersberger said all members benefit from an expert staff and a push in recent years for greater bipartisanship on the panel. The issues are complex and time-consuming, he said, "but we have to learn them. We have to hold these agencies accountable, but we also have to give them the resources they need to protect our country."

Sen. John D. Rockefeller IV (D-W.Va.), a member of the Senate Intelligence Committee who expressed anger that Congress was kept in the dark about interrogation and surveillance tactics under the George W. Bush administration, now feels that Congress has what it needs. He credits Feinstein and the Senate panel's ranking Republican, Sen.

Saxby Chambliss of Georgia, for inviting every senator into the committee offices to examine classified materials.

“The intelligence oversight committees have kicked the tires on these programs very hard, with hearings and legislation and oversight, and the programs have overwhelming bipartisan support on these committees,” a Rockefeller spokeswoman said.

At this point in the story, I started wondering why the WaPo made no mention of this Guardian report, which documented what the House Intelligence Committee’s responsiveness was really like.

Rep. [Morgan] Griffith requested information about the NSA from the House Intelligence Committee six weeks ago, on June 25. He asked for “access to the classified FISA court order(s) referenced on Meet the Press this past weekend”: a reference to my raising with host David Gregory thestill-secret 2011 86-page ruling from the FISA court that found substantial parts of NSA domestic spying to be in violation of the Fourth Amendment as well as governing surveillance statutes.

In that same June 25 letter, Rep. Griffith also requested the semi-annual FISC “reviews and critiques” of the NSA. He stated the rationale for his request: “I took an oath to uphold the United States Constitution, and I intend to do so.”

Almost three weeks later, on July 12, Rep. Griffith requested additional information from the Intelligence Committee based on press accounts he had read about Yahoo’s unsuccessful efforts in court to resist joining the NSA’s PRISM program. He specifically wanted to

review the arguments made by Yahoo and the DOJ, as well as the FISC's ruling requiring Yahoo to participate in PRISM.

On July 22, he wrote another letter to the Committee seeking information. This time, it was prompted by press reports that that the FISA court had renewed its order compelling Verizon to turn over all phone records to the NSA. Rep. Griffith requested access to that court ruling.

The Congressman received no response to any of his requests.

The Guardian story also reveals how the House Intelligence Committee voted against giving Alan Grayson material, and quotes Justin Amash saying he had similar difficulties getting information.

But I also wondered, since this WaPo report was clearly written in part to assess claims in the White Paper that Congressional approval has been a key part of this program, why it didn't quote these two passages:

In December 2009, DOJ worked with the Intelligence Community to provide a classified briefing paper to the House and Senate Intelligence Committees that could be made available to all Members of Congress regarding the telephony metadata collection program. A letter accompanying the briefing paper sent to the House Intelligence Committee specifically stated that "it is important that all Members of Congress have access to information about this program" and that "making this document available to all members of Congress is an effective way to inform the legislative debate about reauthorization of Section 215." See Letter from Assistant Attorney General Ronald Weich to the Honorable Silvestre Reyes, Chairman, House Permanent Select

Committee on Intelligence (Dec. 14, 2009). **Both Intelligence Committees made this document available to all Members of Congress prior to the February 2010 reauthorization of Section 215.** See Letter from Sen. Diane Feinstein and Sen. Christopher S. Bond to Colleagues (Feb. 23, 2010); Letter from Rep. Silvestre Reyes to Colleagues (Feb. 24, 2010);

[snip]

An updated version of the briefing paper, also recently released in redacted form to the public, was provided to the Senate and House Intelligence Committees again in February 2011 in connection with the reauthorization that occurred later that year. See Letter from Assistant Attorney General Ronald Weich to the Honorable Dianne Feinstein and the Honorable Saxby Chambliss, Chairman and Vice Chairman, Senate Select Committee on Intelligence (Feb. 2, 2011); Letter from Assistant Attorney General Ronald Weich to the Honorable Mike Rogers and the Honorable C.A. Dutch Ruppersberger, Chairman and Ranking Minority Member, House Permanent Select Committee on Intelligence (Feb. 2, 2011). **The Senate Intelligence Committee made this updated paper available to all Senators later that month.** See Letter from Sen. Diane Feinstein and Sen. Saxby Chambliss to Colleagues (Feb. 8, 2011).

They describe the two notices the Intelligence Community sent the Intelligence Committees during PATRIOT Act reauthorization describing the phone and Internet dragnets.

Ron Wyden has already shown that the notices made claims about the importance of the Internet dragnet that the IC has subsequently agreed were wrong. And I have shown that what the IC

actually did is send a document after a long delay, after significant parts of the debate on the program had taken place, and at a point when the Administration was already screaming Terror! Terror! Reauthorize now!

The White Paper's description of the 2009 distribution reveals that Dianne Feinstein and Silvestre Reyes actually sat on the documents for two months, from December until February (making the total delay from the start of the debate five months), before they invited their colleagues to come look at them, – I guess to get further into the Terror! Terror! Reauthorize now! stage?

But the White Paper also seems to suggest – with its mention of Dianne Feinstein's letter inviting Senators to read the 2011 notice but silence about Mike Rogers' letter – that Rogers didn't even tell House members about it.

The Administration keeps pointing to these Congressional notices as proof that Congress was properly informed about the dragnet. But as each new detail about the notices comes out, it becomes increasingly clear those notices were about obfuscation, not information.

Update: Justin Amash just posted this:

Less than two weeks ago, the Obama administration released previously classified documents regarding NSA's bulk collection programs and indicated that two of these documents had been made available to all Members of Congress prior to the vote on reauthorization of the Patriot Act. I can now confirm that the House Permanent Select Committee on Intelligence did NOT, in fact, make the 2011 document available to Representatives in Congress, meaning that the large class of Representatives elected in 2010 did not receive either of the now declassified documents detailing these programs.