

To Democratic Subscribers

House Judiciary Committee Analysis of the Nunes Memo

Sending Office: Committee on the Judiciary - Minority Staff

February 3, 2018

Dear Democratic Colleague:

On Friday, House Republicans released the so-called “Nunes memo,” a set of deeply misleading talking points drafted by the Republican staff of the House Permanent Select Committee on Intelligence. House Republicans did so over the objections of the Department of Justice, the Director of the FBI, the Director of National Intelligence, and several Senate Republicans, among others.

You may have heard President Trump describe the allegations in the Nunes memo as a “disgrace.” He thinks “a lot of people should be ashamed.” President Trump is right, in his way. This embarrassingly flawed memo is a disgrace. House Republicans should be ashamed.

Although I have had the benefit of reading the materials that form the basis for the Nunes memo, most members have not—including, reportedly, Chairman Nunes. Accordingly, I am forwarding the legal analysis below for use by your office based on my review the Nunes memo and on outside sources.

Please let my staff know if we can provide your office with any additional guidance.

Sincerely,

Jerrold Nadler

Ranking Member

House Committee on the Judiciary

I. The FISA court found probable cause to believe that Carter Page is an agent of a foreign power. Nothing in the Nunes memo rules out the possibility that considerable evidence beyond the Steele dossier helped the court reach that conclusion.

We should not lose sight of a critical and undisputed fact: the Foreign Intelligence Surveillance Court found probable cause to believe that Carter Page—a member of the Trump campaign’s foreign policy team—was an agent of the Russian government.

The Nunes memo states that, “[o]n October 21, 2016, DOJ and FBI sought and received a FISA probable cause order . . . authorizing electronic surveillance on Carter Page.” To obtain an order to conduct surveillance under Title I of the Foreign Intelligence Surveillance Act, the government must provide “a statement of the facts and circumstances” demonstrating probable cause that “the target of the electronic surveillance is . . . an agent of a foreign power.”

The central allegation of the Nunes memo is that the government committed a fraud when it obtained an order to conduct surveillance of Carter Page, a member of President Trump's foreign policy team during the campaign. The memo claims that "[t]he 'dossier' compiled by Christopher Steele . . . formed an essential part of the Carter Page FISA application," but that the government failed to disclose "the role of the DNC, Clinton campaign, or any party/campaign in funding Steele's efforts."

If not for this misrepresentation to the court, the story goes, there never would have been a Russia investigation. **This claim is deliberately misleading and deeply wrong on the law.**

First, the Nunes memo appears to concede that the investigation into the Trump campaign's ties to the Russian government was well underway before the government applied for an order to conduct surveillance of Carter Page. In its final paragraph, the Nunes memo states: "[t]he Papadopoulos information triggered the opening of an FBI counterintelligence investigation in late July 2016." The statement refers to George Papadopoulos, another member of the Trump campaign's foreign policy team. There is no reason to dispute the Nunes memo's assertion that the FBI was actively investigating the Trump campaign months before they approached the court about Carter Page.

Second, there is already a well-established body of law dealing with allegations that "material and relevant information was omitted" from the application to the court—and, in the case of Carter Page, that law appears to fall almost entirely on the side of the government. In *Franks v. Delaware* (1978), the U.S. Supreme Court held that a court may only void a search warrant if the government "knowingly and intentionally, or with reckless disregard for the truth," included false information or excluded true information that was or would have been critical to the court's determination of probable cause. **The Nunes memo alleges nothing that would even come close to meeting this standard.** Indeed, we have every indication that the government made its application to the court in good faith.

So, to be clear: Carter Page was, more likely than not, an agent of a foreign power. The Department of Justice thought so. A federal judge agreed. That consensus, supported by the facts, forms the basis for the warrant issued by the FISA court. The Russian government waged a massive campaign to discredit our election. Carter Page appears to have played a role in that effort. The FBI has a responsibility to follow these facts where they lead. The Nunes memo would have us sweep this all under the rug. And for what, exactly?

II. Christopher Steele is a recognized expert on Russia and organized crime.

Through several acts of willful omission, the Nunes memo alleges the FISA application is tainted because Christopher Steele "was a longtime FBI source who was paid over \$160,000 by the DNC and the Clinton campaign . . . to obtain derogatory information on Donald Trump's ties to Russia." The Nunes memo would have us believe the Russia investigation was a Democratic plot from the outset. That is simply ridiculous.

The Nunes memo does not show that the government relied solely, or even substantially, on the information provided to the FBI by Christopher Steele when it made its application to the court. It does not show that Steele's work was compromised by the source of funding. It does not show that Fusion GPS—the firm that hired Steele to do this work—was any more or less diligent when it worked for Democratic clients than when it worked for Republicans. And, amazingly, **the Nunes memo does not provide a single shred of evidence that any aspect of the Steele dossier is false or inaccurate in any way.**

We have no idea if Christopher Steele even knew the source of his funding when Fusion GPS first hired him to research Donald Trump's connections to the Russian government. In fact, Fusion GPS initiated the project on behalf of the conservative *Washington Free Beacon*, not the DNC. The firm's task was to provide credible research, and they hired an expert for the job—a retired British intelligence officer, experienced in Russian affairs and well-known to the FBI as a useful source of valuable intelligence in earlier investigations.

Nothing about the source of Steele's funding or his later opinions about Donald Trump speak to the credibility of his work, or its inclusion in the FISA application. The Nunes memo gives us no reason to doubt the

court's determination of probable cause to believe that Carter Page was an agent of the Russian government—particularly given Page's later admissions to the press about his interactions with Russian officials.

And nothing about the payment from the DNC is unethical or improper. Christopher Steele is one of the world's leading experts on Russian organized crime. His job was to uncover the facts. Many feared during the election that the Trump campaign had been compromised by the Russian government. Two guilty pleas and two indictments later, those fears seem well justified.

III. The Nunes memo provides no credible basis whatsoever for removing Rod Rosenstein as Deputy Attorney General.

The Nunes memo makes a point of stating that a number of officials, including Deputy Attorney General, "signed one or more FISA applications on behalf of DOJ." Because Attorney General Jeff Sessions is recused from any investigation related to the 2016 campaigns, Deputy Attorney General Rosenstein directly oversees the Special Counsel's investigation. The Deputy Attorney General has become a target for those attempting to interfere with that investigation. President Trump has refused to rule out using the Nunes Memo as pretext for dismissing the DAG. "You figure that one out," he said when asked about the Deputy Attorney General on Friday.

Whatever one thinks of the merits of the Nunes memo—and it is clearly not a serious document—the memo provides no basis whatsoever to justify the removal of Rod Rosenstein as Deputy Attorney General from his critical and trusted position. The Nunes memo focuses largely on process that transpired before the Deputy Attorney General took office. There is no reason to believe that he reviewed or approved any FISA application for submission to the court except according to normal process and procedures.

The Nunes memo leaves out a critical point in this area as well. Under the Foreign Intelligence Surveillance Act, when seeking a renewal of a surveillance order, the government is required to provide the court "a statement of the facts concerning all previous applications . . . involving any of the persons, facilities, or places specified in the application." That requirement includes a description of the intelligence received so far and its value to the underlying case. Although he was not involved in the initial application, the Deputy Attorney General could not have signed an application to renew surveillance on Carter Page if the government was unable to show that it had already gathered valuable evidence under existing orders and expected that collection to continue. Under these circumstances, any decision *not* to approve the renewal would have appeared to have been politically motivated.

If the President is looking to fire Mr. Rosenstein, he will have to look outside the Nunes memo for his pretext.

IV. The Nunes memo shows that House Republicans are now part and parcel to an organized effort to obstruct the Special Counsel's investigation.

On January 24, 2018, the Department of Justice wrote to warn the House Intelligence Committee that releasing the memo would be "extraordinarily reckless." On January 29, the FBI issued a statement citing "grave concerns" with inaccuracies and omissions in that document. On January 30, the Majority twice blocked our request to move the House Judiciary Committee into closed session, where we would have been free to discuss our own concerns with the plan to make this information public without context, without meaningful input from the FBI, and without providing Members with access to the source materials. On February 1, I wrote to Chairman Goodlatte asking for him to call the FBI Director and other officials from the Department of Justice to brief us on an emergency basis—before the Nunes memo was made public—but my request was again ignored.

House Republicans do not speak up when President Trump attacks the press, smears career investigators by name, or demands loyalty from the leadership of the Department of Justice and the FBI. They have taken no significant steps to understand how the Russian government worked to undermine our last election. They show little interest in protecting our next election from foreign attack—even though President Trump's hand-picked intelligence chiefs warn us that the threat is very real.

Until now, we could only really accuse House Republicans of ignoring the President's open attempts to block the Russia investigation.

But with the release of the Nunes memo—a backhanded attempt to cast doubt on the origins of the Special Counsel's investigation—we can only conclude that House Republicans are complicit in the effort to help the President avoid accountability for his actions and for the actions of his campaign.

In the end, who could possibly benefit from the release of this shoddy work?

Only Donald Trump, who will use these half-truths to further interfere with the Special Counsel, and Vladimir Putin, who now has a clear view of how our intelligence community attempted to interrupt his operations in the United States.

Additional Background

Christopher Steele served as an intelligence officer with British intelligence service MI6 from 1987 until his retirement in 2009. From 1990 to 1992, he [worked under diplomatic cover](#) as an MI6 agent in the Embassy of the United Kingdom to Russia. By 2006, Steele headed the Russia Desk at MI6. He remains one of the world's foremost experts on Russia—and, in particular, connections between the Russian government and organized crime.

In September 2015, the conservative [Washington Free Beacon](#) retained the services of Fusion GPS to conduct opposition research on Donald Trump. When President Trump emerged as the Republican candidate, the Clinton Campaign and the Democratic National Committee hired Fusion GPS for the same services. As part of this project, Christopher Steel produced what became known as the Steele dossier.

Carter Page was known to the United States government for his [involvement with the Russian government](#) long before he joined the Trump campaign. [Court documents](#) show that Russian intelligence operatives attempted to recruit Page in 2013. One spy thought that Page was “an idiot” who wants to “rise up” and “earn lots of money.”

Then-candidate Donald Trump named Page a part of the [Trump campaign's foreign policy team](#) on March 21, 2016. In July 2016, with the [explicit approval](#) of the Trump campaign, Page traveled to Moscow to give a speech on “the future of the world economy” and to [meet with Russian officials](#). Despite several public accounts of these meetings, Page would later [deny any contact](#) with the Russian government. By August 2016—when it had become apparent that the Russian government was working to [undermine the election](#)—the Trump campaign began to [distance itself](#) from Carter Page.

Later reports show that, in testimony before the House Intelligence Committee, Page admitted to meeting with Russian officials and to briefing at least one [senior person](#) on the Trump campaign about those meetings.

None of this information relies upon the Steele dossier.

The **relevant legal standard** for evaluating the FISA application is laid out in [Franks v. Delaware](#). “[T]here is, of course, a presumption of validity with respect to the affidavit supporting the search warrant.” 438 U.S. 154, 171.