

# The Atlantic

## How the Nunes Memo Harms Intelligence Oversight

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The infamous #memo has finally been #released—and landed with a flop and a fizzle. Far from the “worse than Watergate” scandal we were promised, the overwhelming consensus of informed commentators has been that the document prepared by staff for Representative Devin Nunes, chair of the House Intelligence Committee, not only failed to unearth any real impropriety in the investigation of former Trump adviser Carter Page, but may have accidentally bolstered its legitimacy.

Sold as explosive documentation of a “worse than Watergate” scandal, the Nunes memo’s chief contention was that the FBI’s application to the Foreign Intelligence Surveillance Court for a wiretap order targeting Page *after* he left the Trump campaign relied on a now-infamous “dossier,” funded by the Democratic National Committee, by way of the firm Fusion GPS, and that the application failed to disclose the dossier’s origin to the surveillance court. But the warrant had been renewed three times—once by Trump’s own Justice Department appointees—and law-enforcement sources claim that the judge had been, contra the memo, informed of the dossier author’s political slant. Even the memo itself acknowledged the Russia investigation had begun with a different Trump adviser, George Papadopoulos—not the dossier.

Yet even as the memo fades from the front pages, it is likely to have a lasting impact—and not merely because Trump-friendly cable hosts will continue to pretend it contains proof of some “Deep State” conspiracy against the Trump presidency.

The political abuse of the American intelligence community’s ever-expanding surveillance powers is a serious threat—one that history provides ample ground to believe will naturally occur in the absence of rigorous oversight. The memo’s lasting effect will be to cripple the already feeble House Permanent Select Committee on Intelligence, at precisely the time when America most needs it to be robust and credible because of that threat.

Indeed, it was only after the Church Committee of the mid-1970s disclosed decades of endemic abuse, under administrations of both parties, that congressional oversight of intelligence—formerly informal and fitful at best—was formalized with the creation of the House and Senate select committees on intelligence. While a number of other oversight bodies, most notably the Foreign Intelligence Surveillance Court, which must approve warrants sought under FISA, may

have mitigated somewhat the risks of such abuse, the spying powers of the intelligence agencies—and thus the potential consequences of their misuse—have also grown enormously.

One reason for this is political: Since 9/11, legal restrictions on intelligence surveillance have been consistently whittled away, and broader authorities granted. The USA Patriot Act tore down the putative “wall” between intelligence and criminal inquiries, enabling the use of powerful intelligence tools in a wider range of investigations, while also massively broadening the scope of those tools to encompass a far wider range of sensitive telecommunications and financial records. The FISA Amendments Act of 2008 gave us the recently reauthorized Section 702, which permits warrantless targeting of foreigners on a mass scale—followed by warrantless searching after the fact of the billions of communications intercepted for conversations with or about Americans.

The second primary reason is technological: The emergence of the internet as a mass medium means that the ordinary activities of ordinary citizens leave easily searched, heavily centralized digital records. A few decades ago, it would have been impossible to survey the daily reading habits of millions of Americans, or to collect and search through their written correspondence. Now, the task is trivial: Tech companies routinely do it just to serve us better advertisements. And even our offline world is now chock full of networked computing devices, festooned with cameras, microphones, and GPS location-tracking chips. No totalitarian state has ever constructed a panopticon so pervasive—and potentially intrusive—as the one we’ve voluntarily built around ourselves for convenience.

That means it’s more vital than it has ever been in our history that overseers stand ready to detect such abuse when it happens—and, just as importantly, to be believed when they expose it. That can hardly be taken for granted: Polls show that only 12 percent of Americans express a “great deal” or “quite a lot” of confidence in Congress; that figure is 72 percent for the military (of which the National Security Agency is technically a part) and 57 percent for law enforcement. Historically, leaders in Congress have sought to bolster the credibility of the intelligence committees by filling them with relative moderates, and insisting that their work be governed by a norm of nonpartisanship.

It will be hard for anyone who has read the Nunes memo to regard the committee’s output as nonpartisan now. And by crying wolf about intelligence abuses with no serious evidence, Nunes and his enablers have made it far easier for America’s spy agencies to dismiss any future allegations, however meritorious, as yet another self-serving partisan distraction: at best, baseless conspiracy theorizing; at worst, an effort to obstruct legitimate investigations.

But Nunes has not just dealt a blow to the committee’s credibility; it’s also likely he’s severely hampered its effectiveness.

In principle, the intelligence community is obligated to submit to robust oversight by Congress. In practice, it has always enjoyed enormous ability to gum up the process—slow walking the process of making classified material available and lading it with access restrictions when it is finally produced. A sufficiently determined committee can often pry the information it needs loose eventually, but such determination has often been lacking. As Stanford University’s Amy

Zegart has documented, the intelligence committees appear much less productive than their counterparts, holding far fewer hearings and considering fewer legislative proposals.

Moreover, the committees are ultimately dependent on the intelligence community itself to direct their attention to areas that demand further scrutiny—whether in the form of official briefers, or whistleblowers who approach members with their concerns. Neither type is likely to repose much confidence in a committee that seems so enthusiastic to make a partisan circus of its grave task.

None of this to suggest that intelligence oversight is particularly robust as it stands: When the 9/11 Commission referred to congressional oversight of the intelligence community as “dysfunctional,” it was not reporting an outrageous new discovery, but only echoing the longstanding consensus of intelligence scholars.

Political scientists have offered a relatively simple explanation for this: Doing good intelligence oversight just doesn’t pay off. A legislator who spots and quietly resolves an intelligence problem typically doesn’t get to issue a press release about it, and a seat on an intelligence committee rarely provides an opportunity to direct juicy benefits to constituents back home. Thus, those committee appointments are rarely sought after, and legislators tend to rationally devote their time and scarce resources elsewhere, leaving intel committees perennially understaffed.

Nunes may finally have found a way to make chairing HPSCI yield real political dividends—but only by wrecking its credibility for the foreseeable future.

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