

# *The* CHRISTIAN SCIENCE MONITOR

## **Nunes memo: What will determine its political effect**

Peter Grier

February 1, 2018

It's short, only four pages long. But the "Nunes memo," which accuses the FBI of abusing surveillance powers to get the Russia investigation rolling, has ripped through Washington with the power of a derecho windstorm, leaving dust, disruption, and conflict in its wake.

Created by aides to Rep. Devin Nunes (R) of California, chairman of the House Intelligence Committee, the memo is based on highly classified FBI and intelligence community source material. The FBI says it has "grave concerns" about the document's accuracy. House Democrats who have read it charge that it is misleading to the point of bad faith, formed from bits cherry-picked from much longer papers.

Will the uproar taint the Russia investigation's ultimate findings? That may be the point for the administration and its allies. President Trump has long charged that Special Counsel Robert Mueller's probe is a "witch hunt" full of partisan enemies.

But despite distractions, in the end the actual investigation itself is likely to be the determining factor of its political effect.

"It really depends on the magnitude and certitude of what Mueller discovers," says Paul Rosenzweig, a senior fellow at the R Street Institute and former senior counsel in the investigation of President Clinton.

The memo itself is an extraordinary break with the norms of congressional behavior, Mr. Rosenzweig adds. Normally lawmakers with concerns about the behavior of an agency would begin by going to the agency itself, or discussing the issues with a full committee or some larger group.

Instead, Representative Nunes produced a closely held document, which reportedly accuses the FBI of relying on unsupported partisan information to begin electronic surveillance of Carter Page, a former Trump campaign advisor. The theory is that Democratic-funded opposition research was the beginning of the Russia probe, and thus its efforts are bogus.

Nunes then withheld the document for some time from the FBI and the Senate Intelligence Committee, despite requests. After allowing the agency a quick look, the House Intelligence Committee voted to send the document to the White House for presidential review. Mr. Trump declined to halt public dissemination of the memo.

Deputy Attorney General Rod Rosenstein may be a particular target of the paper. Reportedly it cites his role in signing off on an extension of the surveillance of Mr. Page after Mr. Rosenstein was appointed by Trump last year.

“We’ve gotten to the point where it now seems fair game to politicize the intelligence gathering process, weaponize the legislative process, and call into question the probity of people who have served the country for years,” says Rosenzweig.

Other experts note that Page has been a subject of concern for US counterintelligence officials for years. That means it is unlikely that Democratic-funded opposition research was the main evidence presented to a federal judge for his approval of a secret surveillance warrant.

In 2013 the FBI warned Page, an energy consultant who has lived in Russia, that it had eavesdropped on known Russian agents discussing methods of recruiting Page into their espionage orbit. There is further evidence that US surveillance of Page continued after that time, prior to beginning of the investigation into Russian influence in the 2016 US election.

Page’s surveillance warrant appears to have been extended at least once. To do so, FBI agents would have needed to show a judge evidence that they were producing useful intelligence, experts note.

Analyzing the behavior

It would have required a conspiracy of FBI agents, Justice officials, and a federal judge to push through the warrant on a purely partisan basis, notes Julian Sanchez, a national security and intelligence surveillance expert at the Cato Institute, in an interview. In addition, the GOP lawmakers on the Intelligence Committee who voted to make the Nunes memo public also recently voted to extend National Security Agency surveillance powers under Section 702 of the Foreign Intelligence Surveillance Act. Would they have done that if they were concerned about political abuse of electronic eavesdropping?

“Nunes and his allies haven’t in any respect behaved as you might expect from members of Congress who have uncovered serious intelligence abuses,” writes Mr. Sanchez in an analysis on the Just Security web site.

His worry, Sanchez says, is that Trump keeps talking about his frustration about being unable to control the “Trump Justice Department.” He seems to believe that federal law enforcement should be under his direct control, to investigate those he wants investigated, and leave alone those he wants unbothered.

Rosenstein, who appointed Mr. Mueller as special counsel in the first place, has been a particular target in this regard. Reportedly, Trump refers to him as that “Democrat from Baltimore,” though Rosenstein is a Republican who was appointed US Attorney in Maryland by President George W. Bush in 2005 – and was appointed to his current Justice Department post by Trump himself.

Trump may see the Nunes memo as an excuse to fire Rosenstein and perhaps replace him with someone who will rein in Mueller.

“He has cover to clean house, [so] we may get a much more compliant cohort at those agencies,” says Sanchez.

The public may get a chance to see what all the fuss over the memo is about as early as Friday. Trump is expected to tell Congress he has no objection to its publication, according to news reports. The House Intelligence Committee will then be able to vote again and release the memo.