

## **EDITORIAL: Nunes' memo highlights dangers of a secret judicial tribunal**

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Washington was breathlessly abuzz after the latest bit of political theater hit the stage on Friday when House Republicans released the much-awaited Nunes memo. Depending on your viewpoint, the document was either a misleading and incomplete hatchet job intended to undermine the Mueller investigation or evidence of the biggest scandal since Watergate that outlines a damning road map of corruption and reveals the Deep State's obsession with getting rid of Donald Trump.

It's worth pointing out, though, that those who cited national security concerns as a reason for keeping the three-and-a-half-page memo confidential appear to have exaggerated their case. There are no state secrets contained in the document, and most of it includes information that has already been reported. If this is the type of information that the government routinely classifies as sensitive, it ought to be doing far less of such classifying.

As for the Democratic response, which the GOP supposedly seeks to suppress ... well, release that, too. The more information available for public consumption on the murky Trump-Russia allegations, the better.

But putting aside the partisan hyperventilating, this debate will have been productive if it succeeds in educating more Americans about the secretive Foreign Intelligence Surveillance Court — the FISA court — at the heart of the controversy. This institution deserves more attention and operates in direct contradiction to the bedrock constitutional principle that justice be carried out in public.

The court was established in 1978 during the Cold War to oversee surveillance requests from intelligence agencies regarding foreign agents in the United States. A handful of unnamed judges — appointed by the chief justice of the U.S. Supreme Court — serve on a rotating basis. The public has no access to information about the court's proceedings. As the Cato Institute's Julian Sanchez noted last week, "No FISA application has ever been made public."

While the court has recently been more diligent in rejecting or modifying warrant requests, "it never turned down a single wiretap application" in its first 23 years, Mr. Sanchez points out. It's virtually unlimited power became a point of contention when leaked documents in 2013 revealed that the court had allowed the government to spy on Americans and collect reams of metadata from U.S. cellphones users.

The FBI and the intelligence community routinely cite the existence of the court's oversight to assuage concerns from civil liberties advocates about potential abuses. But because the panel operates in the shadows, there is no way for anyone to determine whether it's properly carrying out that function. "Trust us," is hardly a comforting assurance coming from the federal government.

No, constitutional protections shouldn't apply to foreign terrorists or spies. But regardless of how one views the Nunes memo, it highlights why Americans have every reason to be concerned about potential abuses when a judicial entity operates secretly as a virtual Star Chamber, unfettered from crucial checks and balances and immune to the vital concepts of transparency and accountability.