

# The New York Times

## Trump's Deceitful Claims About Carter Page Have Obscured a Bigger Debate on Privacy

Julian Sanchez

July 24, 2018

**The F.B.I. followed the laws in wiretapping the former Trump adviser. But do those laws protect our privacy well enough?**

“Who are you going to believe, me or your lying eyes?” That’s the essence of the response from President Trump and his allies to the unprecedented release of a Foreign Intelligence Surveillance Act warrant application, the basis for extended surveillance of Carter Page, a former Trump adviser.

We are now witnessing an effort to gaslight the press and the public in support of a discredited narrative about politically motivated surveillance of the Trump campaign.

What’s more, that gaslighting is obscuring the need for a more nuanced debate about whether our intelligence surveillance authorities are in need of systemic reform. The question we should ask isn’t whether the F.B.I. followed the laws in wiretapping Carter Page — they clearly did — but whether the laws they followed protect our privacy well enough.

Mr. Page’s brief tenure as a foreign policy adviser to Mr. Trump in 2016 was cut short after reports disclosed that investigators were probing his ties to Russia. He has become a pillar of Mr. Trump’s frequent claims that a “Deep State” cabal within the intelligence community is determined to undermine his administration.

Earlier this year, a memo prepared by staff for Representative Devin Nunes, chairman of the House Permanent Select Committee on Intelligence (known now as “the Nunes memo”), charged that the F.B.I. had essentially duped the Foreign Intelligence Surveillance Court into issuing — and repeatedly renewing — a wiretap order targeting Mr. Page as an “agent of a foreign power.”

The application released Saturday remains too heavily redacted to meaningfully assess the strength of the F.B.I.’s argument that Mr. Page engaged in “clandestine intelligence activities” on behalf of Russia. But it does make crystal clear that Mr. Nunes abused his position and his

access to classified information to level a series of grossly misleading accusations against the F.B.I. Which is presumably why Mr. Nunes, Mr. Trump and a handful of media allies are engaged in a brazen campaign to obscure what the documents actually show.

Even redacted, the applications lay waste to the central charges made in the Nunes memo. Chief among these was that the F.B.I., in relying on controversial reporting by the former British intelligence officer Christopher Steele, had failed to “mention Steele was ultimately working on behalf of — and paid by — the D.N.C. and Clinton campaign.”

It’s true the application does not name Mrs. Clinton. Nor, per the general practice of not naming Americans who aren’t investigative targets, does it name Mr. Trump, referenced throughout as “Candidate #1.” Yet a full page is devoted to the F.B.I.’s rationale for citing Mr. Steele, which both acknowledges his employers were “likely looking for information that could be used to discredit” Mr. Trump and explains why, notwithstanding Steele’s “reason for conducting the research,” the F.B.I. regarded his reporting as credible.

To regard this as deception, you must believe, first, that describing a source’s work as opposition research is inadequate context absent the client’s name (information Mr. Steele himself did not know), and second, that seasoned judges would be too dim to infer that Democrats were the likeliest funders of such research.

Similarly demolished is the Nunes memo’s argument that the F.B.I. falsely implied independent corroboration for Mr. Steele’s claims by citing news reports about his work. The reference to those reports is in a separate section detailing not Mr. Page’s Russian contacts but his public denials — potentially relevant if they included independently falsifiable claims — and a partly redacted footnote suggests the F.B.I. understood those articles to be indirectly derived from Mr. Steele’s work.

An independent line of attack was mounted by the National Review writer Andrew McCarthy, a former prosecutor, who blasted the F.B.I. for relying on Mr. Steele’s “hearsay,” which had not been properly “verified.” While redactions leave the full body of evidence unclear, verification in the FISA context typically refers to compliance with the so-called Woods Procedures implemented in 2001, a process meant to ensure that representations to the court match what’s in the F.B.I.’s case files, not to automatically exclude information provided by a single source. Even in ordinary criminal investigations, current law unambiguously allows hearsay — secondhand information normally inadmissible as evidence in a criminal prosecution — to be used in warrant applications.

Does the application as a whole substantiate the F.B.I.’s belief that “the Russian Government’s efforts are being coordinated with Page and perhaps other individuals associated with Candidate #1’s campaign”? The black bars obscuring whole sections of the published applications make it hard to say, but in the renewal applications — all, like the first, approved by Republican-appointed judges — those redacted sections grow progressively longer, suggesting an accumulation of information, separate from Mr. Steele’s contentious “dossier,” that the F.B.I. regarded as corroborating their initial assessment.

Perhaps, though, that shouldn’t matter: A warrant is supposed to be justified by the evidence at hand before the search, not the evidence the search itself uncovers. And if the parts of the Page

application that are now public constituted the whole of the case, that would indeed be thin grounds for a yearlong wiretap on an American.

That, however, would not be a problem of F.B.I. abusing the system; it would be a problem with the system itself. Once we recognize claims about the F.B.I. misleading the court as nonsense, there are only two possibilities: Either the F.B.I. had compelling evidence that Mr. Page was an agent of a foreign power, or four different judges signed off on wiretapping him without such evidence.

It's obvious why Mr. Trump and his allies would want to deny the first possibility. But the second is equally inconvenient for Mr. Nunes and many of his co-partisans, who have long supported more expansive intelligence surveillance powers and worked furiously to defeat legislative efforts to impose stricter privacy safeguards.

Shortly before releasing his notorious memo, after all, Mr. Nunes was instrumental in reauthorizing a surveillance authority known as Section 702, which permits warrantless interception of Americans' communications with intelligence targets abroad. And he voted to block proposals that would require judicial approval before F.B.I. agents could sift through the National Security Agency's vast wiretap database looking for those communications.

Because Republicans are normally profoundly uninterested in questioning the system of foreign intelligence surveillance authorities — which, after all, are now in the hands of an executive branch headed by a Republican — they are clinging to spurious claims of Deep State deception, perhaps hoping that this weekend's document release is too lengthy for most Americans to examine directly.

The reality is more complex than Mr. Trump's cartoon conspiracy, but no less disturbing. If the full, uncensored case against Carter Page holds up, then the F.B.I. had good reason to assert that a presidential adviser was working with a hostile foreign power to undermine the integrity of an American presidential election.

If it does not, though, the implications are equally disconcerting: It would mean that an innocent American was subject to incredibly invasive surveillance, not because the F.B.I. broke the rules, but because the rules allowed it.

*Julian Sanchez is a senior fellow at the Cato Institute.*