

The Vox logo is centered on a bright yellow square background. The word "Vox" is written in a bold, black, serif font.

## **The Democratic rebuttal to the Nunes memo tears it apart**

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Late on Saturday afternoon, House Democrats surprised the country by releasing their rebuttal to the so-called Nunes memo — the document, prepared by Rep. Devin Nunes (R-CA), that has become a key part of the conservative argument that the FBI is biased against President Donald Trump. The Democrats' rebuttal memo, written by Rep. Adam Schiff (D-CA), argues that the Nunes memo is full of “distortions and misrepresentations” that don't stand up to scrutiny based on the underlying classified evidence.

Having now read both memos, I can say with confidence: Schiff makes his case. He quotes key FBI documents that explicitly contradict the Nunes memo's core arguments. Any fair-minded observer who reads these two documents side by side can only conclude one thing: Nunes is either deeply misinformed or straight-up lying.

“This is a pretty thorough demolition,” Julian Sanchez, an expert on surveillance at the libertarian Cato Institute, tweeted after reading Schiff's memo.

### The core of the Nunes-Schiff argument

The Nunes memo's core allegation is that the FBI and Department of Justice misled at least one federal judge on a Foreign Intelligence Surveillance Act (FISA) court during the Trump-Russia investigation.

In October 2016, the FBI requested a FISA warrant to spy on former Trump campaign aide Carter Page. FBI and DOJ officials argued that Page had troubling connections to the Kremlin, and wanted to check him out as part of their overall investigation into the Trump campaign's ties to Russia.

An “essential part” of the application, Nunes argues, came from the so-called Steele dossier — the document containing major allegations of collusion between the Trump campaign and Russia that was put together by former British spy Christopher Steele (it’s also the source of the “pee tape” rumors). The problem, Nunes argues, is that Steele’s research was partially funded by Democrats — but the FBI purposely neglected to tell the court about that source of funding.

In essence, Nunes alleges that the FBI used opposition research put together by a Democratic political operative to go after the Trump campaign without disclosing that clear conflict of interest to the court. This was, according to Nunes, “a troubling breakdown of legal processes established to protect the American people from abuses related to the FISA process.”

The Schiff memo argues that this isn’t true. And it has the receipts to prove it.

Schiff quotes a lengthy passage from the actual application the FBI sent to the FISA court asking for permission to snoop on Page. In the key line, the application explicitly notes that “the FBI speculates” that Steele had been hired to find “information that could be used to discredit Candidate #1’s [Trump’s] campaign.”

That’s it. That’s the ballgame. The FBI clearly states right there in the FISA application that they believe Steele was hired to find dirt on Trump. Since the core contention of the Nunes memo is that the FBI *didn’t do that*, Nunes’s entire argument falls apart.

After the Schiff memo was released on Saturday, House Republicans released a document rebutting its core claims. Their response to this damning citation is — and I am not making this up — that the vital line in which the FBI discloses the information about Steele was “buried in a footnote.”

“This is clearly an attempt to avoid informing the Court, in a straightforward manner that the DNC and Clinton campaign paid for the dossier,” the Republican rebuttal argues.

It’s true that it was in a footnote. But that’s about as far as it goes.

At this point, it’s unclear whether the FBI did in fact know who specifically was funding Steele’s work, or that it was the Democratic National Committee and the Hillary Clinton campaign. But regardless, the FBI clearly told the judge that some of the information it was using to justify the FISA warrant request came from a partisan source. And the judge — who presumably read the footnotes — decided it was compelling enough to approve the application anyway. Case closed.

The Schiff memo tears apart Nunes’s argument in other ways too

There’s more in the Schiff memo that’s important than just that one devastating point.

The conceptual problem with Nunes’s argument, as opposed to the factual one, is that it doesn’t really matter if Steele was biased. The FBI relies on sources with axes to grind all the time; people typically don’t go to the authorities with damaging information about people they like.

The key question in an application like this isn’t whether the source liked the target; it’s whether the specific claims they’re making are credible. And the Schiff memo points out that the FBI had independent reasons to believe that Steele’s arguments were credible.

For one thing, Page had been on the bureau's radar for some time — as he had been approached by Russian spies in the past as a potential intelligence asset. According to Schiff, the October FISA application laid out Page's connections to the Kremlin "in detail." For instance, while Page was working for Trump, in July 2016, he traveled to Moscow to give a commencement speech at a Russian university, which certainly would have raised some red flags at the bureau.

The Steele dossier, per Schiff, was used as *supporting* evidence to further establish that this trip was sketchy. Specifically, Steele's sources said that Page met with two Russians close to Putin during his trip (which Page insists didn't happen).

But then something interesting happened. After the FISA warrant was approved, Schiff writes, "[the] DOJ provided additional information obtained through multiple independent sources that corroborated Steele's reporting." The precise nature of those sources is included in the Schiff memo, but it's redacted in the public copy, to the point where it's not even clear which specific Steele claims have been vindicated.

Nonetheless, it's incredibly important. It suggests that Steele's information was *borne out by the FBI's own work*. Citing him wasn't some kind of intelligence malpractice, or anti-Trump bias, but rather the result of a source who has a track record of providing relevant, correct intelligence.

This is perhaps why the FISA warrant, which has to be renewed every 90 days by law, was renewed three subsequent times — all by judges appointed by Republican presidents.

So how did Nunes get this so wrong? A February interview he did with Fox News provides a bit of a clue. In it, host Bret Baier asks Nunes if he read the October 2016 FISA warrant that figures so prominently in his explosive memo.

"No, I didn't," Nunes told Baier.