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Nunes's memo is a stunt. But surveillance does need more scrutiny.

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Of the many strange inversions the Trump era has produced, few are as jarring as the flip in Republican orthodoxy about the federal intelligence and law enforcement communities. "Law and order" conservatives who, a few years ago, treated skepticism about the Patriot Act as a blasphemous insult to the integrity of American intelligence professionals now routinely traffic in talk of "deep state" conspiracies to abuse surveillance powers.

That was thrown into relief Wednesday, when the FBI traded brickbats with Rep. Devin Nunes (R-Calif.), chair of the House Intelligence Committee. In an unusually public rebuke, the FBI condemned the imminent release of a memo produced by committee staffers alleging misconduct by bureau officials. Nunes quickly returned fire, accusing the FBI — headed by President's Trump appointee, Christopher A. Wray — of having "stonewalled Congress' demands for information." The memo may reportedly be released soon.

Democrats, stepping into the role Republicans had shed, have sided with the intelligence community, invoking the need to protect classified sources and methods. And it's not hard to see why: Nearly everything about Nunes's reinvention as a champion of privacy and civil liberties reeks of disingenuousness.

There are legitimate concerns about the Foreign Intelligence Surveillance Court and the myriad means — not all requiring warrants — by which law enforcement gets access to private conversations involving U.S. citizens. But the fervor around the memo means that these serious policy debates will follow so many others into the maw of Trump-driven partisanship and that the broader questions of how our national security state operates — questions more about legal and institutional design than the motives of individual FBI agents — will go unexamined.

Nunes, along with many of the allies who joined him in whipping up a public outcry to #ReleaseTheMemo, voted last month to reauthorize a controversial warrantless spying authority known as Section 702. Bipartisan efforts to add privacy safeguards for Americans' communications were swatted down with confident assertions that there had been no recorded abuses of such surveillance — an assessment it seems odd to make at the same time as one is alleging a systematic effort by senior intelligence officials to deceive overseers and conceal egregious misconduct.

The manner in which Nunes's hermetically sealed concerns about misuse of spying powers have been pursued is unprecedented. The House Intelligence Committee, which has historically been discomfitingly cozy with the agencies it oversees, made no effort to share what it purports to have uncovered with the FBI's Republican leadership — or, for that matter, with the Trump appointees at the Justice Department who signed off on extending the wiretap on former Trump campaign adviser Carter Page last year — until Sunday. A day later, the House voted along party lines to authorize the memo's declassification and release it, over the objections of the FBI and Justice Department, marking the first time Congress has availed itself of that authority. Few lawmakers were in any position to know whether the four-page memo is accurate. Among House Republicans, only one, Rep. Trey Gowdy (R-S.C.), had consulted the underlying classified documents upon which it was based.

The overarching narrative that the Nunes memo apparently seeks to build — a story of rabid partisans within the Obama administration cooking up a bogus Russia investigation to use as a weapon against Trump — is almost certainly nonsense. Among many, many other glaring defects, it requires the inexplicable complicity of far too many people, many of them Republicans appointed by Trump, within the FBI and the national security division of the Justice Department, as well as the credulous acquiescence of the Foreign Intelligence Surveillance Act court, whose bench is wholly populated by judges placed there by the George W. Bush-appointed chief justice, John G. Roberts Jr.

On the narrower question of whether the wiretap order targeting Page had a solid basis, the memo is unlikely to provide the public with much clarity, either. The memo's core contentions are reportedly that FBI officials relied too heavily on a now-infamous dossier compiled by British former intelligence officer Christopher Steele without adequately corroborating its claims and failed to disclose to the FISA court that Steele's research had been underwritten by Democrats in the market for political opposition research. Even if all that were true, however, it's impossible to know how badly it would undermine the case presented to the court.

Typically, FISA applications are fairly substantial documents, with supporting affidavits running dozens of pages, minutely fact-checked by government lawyers after making it through a labyrinth of internal approvals within the FBI. It matters, then, whether Steele's dossier constituted the heart of the case presented to the FISA court or was more like supplementary material. But the underlying application remains classified, and the other supporting evidence probably cannot be made public: The FBI cannot defend itself by pointing to the Kremlin mole or the electronic intercept or the hacked laptop that bolstered the application, without providing Russian intelligence with a map to its own vulnerabilities — or, at worst, a hit list.

Yet for all that, the memo could still have stumbled into something of merit.

If FBI agents were less than fully candid with the FISA court, that's worth criticizing even if candor would not have changed the outcome. If they failed to do due diligence on claims in Steele's dossier, that's a problem even if the dossier was a relatively minor piece of the puzzle. Those are problems not because they reveal a grand conspiracy but because finding slipshod work in this application — targeting a prominent, politically connected American in an

investigation certain to receive extraordinary scrutiny — should make us wonder what would turn up if the thousands of more-mundane FISA warrants issued each year were subject to a similarly painstaking external review. Which, of course, they never are: No FISA application has ever been made public, and vanishingly few targets of FISA surveillance ever even learn of the spying.

Moreover, whether it has anything to do with the headline-grabbing Russia investigation, *something* odd is clearly afoot with the FISA court. From its inception in 1979 through 2002, the court never turned down a single wiretap application — a sign, intelligence agencies assured us, of the rigorous approval process before reaching the court, rather than the willingness of its judges to act as rubber stamps. The steep spike in FISA applications after 9/11 did finally result in a few the court saw fit to reject or modify.

Until 2015, the highest number of rejections in a single year was five. In 2016, there were 34 — or twice as many as the court had turned down in its entire history before then. The court also saw fit to "modify" a striking 310 applications before approving surveillance. The previous record, set in 2015, was 94. Nor is this unusual burst of resistance a side effect of an unusual number of applications: The number submitted in 2016 — 1,457 — is a bit below the average for the period following 2001.

For some reason, there has been a dramatic increase in the number of applications judges have found deficient in some way. This should be concerning, because however diligent they may be, FISA court judges are ultimately dependent on the facts and analysis they're presented by the government being reliable: The court has no ability to gather its own intelligence.

If Republicans were not so set on scripting a conspiracy thriller to stir the blood of cable news audiences, they might broaden the scope of their concern and ask whether whatever issues they've uncovered are not evidence of a secret vendetta against Trump and his employees but symptoms of some more general degradation of the FISA review process — and perhaps other less strictly regulated authorities. And while Democrats have every reason to treat the memo's larger narrative as suspect, they should not dismiss its specific findings out of hand, at least not wholesale. That the conspiracy against Trump is a fantasy does not mean that the investigation of his campaign proceeded without missteps. And if Page should turn out not to have been acting as an "agent of a foreign power," then his public branding as one is a genuine wrong that would deserve to be remedied, even if it were the product of error rather than malice.

It seems unlikely that the conflict over the Nunes memo will, in the end, amount to much more than a proxy war over the legitimacy of special counsel Robert S. Mueller III's probe of the Trump campaign. But in a better world, it would be an opportunity to exercise better oversight.

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