

CARTER PAGE DID NOT NEED TO BE A SPY TO BE TARGETED UNDER FISA

The NYT has a story that explains something I was wondering about over the weekend: how the Nunes memo could be used – as it reportedly is being used – to justify a Trump bid to fire Rod Rosenstein. Shortly after he was confirmed, NYT reveals, Rosenstein approved the renewal application for the FISA order targeting Carter Page.

A secret, highly contentious Republican memo reveals that Deputy Attorney General Rod J. Rosenstein approved an application to extend surveillance of a former Trump campaign associate shortly after taking office last spring, according to three people familiar with it.

[snip]

[I]n their efforts to discredit the inquiry, Republicans could potentially use Mr. Rosenstein's decision to approve the renewal to suggest that he failed to properly vet a highly sensitive application for a warrant to spy on Mr. Page, who served as a Trump foreign policy adviser until September 2016.

The news is interesting for several reasons. First, it provides more granularity for the timing of the surveillance targeted at Page.

American law enforcement officials began conducting surveillance on him in the fall of 2016, shortly after he left the campaign. It is unclear what they learned about Mr. Page between then and when they sought the order's renewal roughly six months later. It is also unknown whether the surveillance court

granted the extension.

The renewal effort came in the late spring, sometime after the Senate confirmed Mr. Rosenstein as the Justice Department's No. 2 official in late April. Around that time, following Mr. Trump's firing of James B. Comey as F.B.I. director in May, Mr. Rosenstein appointed Mr. Mueller, a former head of the bureau, to take over the department's Russia investigation.

Rosenstein was sworn in on April 26. He appointed Mueller on May 17. If we take that window as the timeframe for the reapplication date, it would date the prior authorization (orders targeting US persons last 90 days) to roughly January 26 through February 17, and the fall one to October 26 to November 17 time frame. The later you get in that initial time period, the closer you get to the time when Page would have been planning a follow-up visit to Russia in December.

Glenn Simpson describes Christopher Steele's second meeting with the FBI, in Rome, about his dossier as occurring sometime in September. So there was perhaps a month between the time Steele provided information on Page and the time the FBI obtained the new order targeting Page.

On top of what the NYT says about Democratic complaints about this memo, there are other reasons to believe this is bogus. Even on 702 – but especially on FISA – the retasking process requires the government to show it obtained new information during the prior surveillance period, meaning the application Rosenstein signed would have been the second to do so.

Plus, there's one more point.

To be targeted FBI had to provide proof that Page was an agent of a foreign power.

The renewal shows that the Justice Department under President Trump saw

reason to believe that the associate, Carter Page, was acting as a Russian agent.

[snip]

To obtain the warrant involving Mr. Page, the government needed to show probable cause that he was acting as an agent of Russia.

But that does not actually entail proving that he, himself, is spying on the US. An American may be targeted as an agent of a foreign power if he knowingly aids or abets someone involved in clandestine intelligence gathering that may involve a violation of criminal statutes.

(A) knowingly engages in clandestine intelligence gathering activities for or on behalf of a foreign power, which activities involve or may involve a violation of the criminal statutes of the United States;

(B) pursuant to the direction of an intelligence service or network of a foreign power, knowingly engages in any other clandestine intelligence activities for or on behalf of such foreign power, which activities involve or are about to involve a violation of the criminal statutes of the United States;

[snip]

(E) knowingly aids or abets any person in the conduct of activities described in subparagraph (A), (B), or (C) or knowingly conspires with any person to engage in activities described in subparagraph (A), (B), or (C).

That's the standard that – given that Page had been warned by FBI in 2013 that he was being recruited – might be fairly easily within reach for Page. I suspect we'll eventually learn

(after whatever brouhaha ensues) that FBI claimed Page was either aiding or abetting Russian spies, or conspiring with them, not that he was a spy himself. But that's a distinction that may be lost on Republicans trying to politicize this.

There's one more thing (one I don't expect applies here but is worth pointing out in any case). The government can target any facility an agent of a foreign power uses, whether or not the agent owns it.

(B) each of the facilities or places at which the electronic surveillance is directed is being used, or is about to be used, by a foreign power or an agent of a foreign power

This is how the government got to do a scan of all Yahoo's users, because the targeted foreign power was using Yahoo mail, generally, and the specific signature searched on identified the people as targets.

Two more points. Trey Gowdy reviewed the underlying intelligence to the memo that is now being used to target Rosenstein, he's telling colleagues to stop pressuring Mueller in part because Mueller is pursuing a counterintelligence component (precisely the kind of thing targeted with FISA!) that will explain what really happened in 2016.

Gowdy said there are "two components" to the purview of Mueller's investigation.

"There is a criminal component. But there's also a counterintelligence component that no one ever talks about because it's not sexy and interesting. But he's also going to tell us definitively what Russia tried to do in 2016," Gowdy said. "So the last time you and I were together, I told my Republican colleagues, leave him the hell alone, and that's still my advice."

Gowdy is one of about six members of Congress who has seen the most sensitive materials in Mueller's case. It's really bizarre that he's saying the GOP needs to back off Mueller because of his CI focus when they're likely misunderstanding how FISA is used in CI.

Finally, remember that nothing that Mueller is known to have done is identifiably fruit from this Carter Page order. Even with Manafort – who was also reportedly targeted in a FISA order – Mueller has not given FISA notice to suggest he's relying on anything derived from FISA (though such notice is always suspect).

So even if he dossier is dodgy, it may be that Mueller is pursuing his case such that he avoids any taint from it.

Update: I keep forgetting, but something that happened with Carter Page may well have been abusive, but it's not what the Republicans are (as far as the public reporting goes) focusing on. It's a sign that they're dummies who don't understand what they purportedly oversee that they haven't figured this out. I'm not going to lay it out here – because those leading this hoax just reauthorized the practice in any case – but I have written it up elsewhere.