NUNES IS SO DUMB HE MISSED THE MOST LIKELY WAY THE TRUMP CAMPAIGN MIGHT HAVE BEEN WIRETAPPED

Devin Nunes is so bad at his job overseeing the nation's intelligence agencies that his memo alleging FISA abuses failed to mention the one way he might have legitimately argued that the Deep State was spying on the Trump campaign.

The memo, released Friday after a week of political drama, purports to show that the process by which the FBI applied for four individualized FISA orders targeting former Trump foreign policy advisor Carter Page, spanning from October 2016 through July 2017, failed to adequately explain to the court that the application included information obtained as part of paid opposition research. On that claim, the memo falls short of making the case. So too does Nunes' claim that "top officials used unverified information [from the Title I warrants] to fuel a counter-intelligence investigation during an American political campaign," since Carter Page had been gone from the Trump campaign for a month before he was targeted.

But the memo only deals with the request for traditional "probable cause" FISA orders approved by the FISA Court. The memo even says this surveillance at issue was "not under Title VII," probably an effort to distinguish this surveillance practice, which Nunes claims is being abused, from collection under FISA's Section 702, which is even more problematic from a privacy standpoint. Nunes wrote the bill that reauthorized Section 702 two weeks ago, a bill that included no reforms to the practice that allows the government to access the communications of Americans against whom the FBI

has no evidence of wrong-doing without a warrant. That is, Nunes wants to make sure you know that only the FISA practice that actually requires probable cause is at issue in his claims of FISA abuse, not the practice that permits warrantless surveillance of Americans that he championed a few weeks ago.

The thing is, Nunes is probably wrong that the surveillance of Carter Page doesn't involve any of the authorities he recently pushed through. That's because, along with Section 702, Nunes' bill extending FISA's Title VII also reauthorized a section, 705(b), which the government uses to spy on Americans already under surveillance, like Carter Page, during the periods when they travel overseas.

Carter Page traveled to Russia and London in December 2016 and Abu Dhabi in January 2017; he told the House Intelligence Committee he met with a slew of interesting foreigners along the way. It would be malpractice for the government to halt surveillance on someone it suspected of spying for Russia *when* he went to Russia.

So assuming the NSA kept spying on Page when he was meeting with the Russians they suspected him of conspiring with while he was in Russia, then the government would have switched to 705(b) authority. That permits the NSA to use the different kinds of surveillance tools, more powerful tools like hacking someone's computer or querying data collected in bulk, that it uses overseas, drawing from more kinds of collection.

The thing is, that kind of individualized overseas surveillance — far more than the domestic individual surveillance at issue in the memo — has been a problem in recent years. Indeed, in the months before the government obtained its first FISA order on Carter Page, the NSA's Inspector General found that in the 8 years since Congress had passed 705(b), NSA had never set up a system to track surveillance conducted under it. Of particular concern, analysts were conducting surveillance under the authority outside the time frame permitted under

the 705(b) order, meaning that analysts might collect data from a period before the 705(b) order, or even before the traditional FISA order underlying it, had been approved. Or, NSA might forget to turn off their hacking sensor in Page's laptop or smart phone even after he returned to the US. By using overseas spying methods outside the time period when the person was overseas, then, NSA might have gotten what amounts to a time machine, letting the government (perhaps unknowingly) obtain stored communications from the period when Page was still working with the Trump campaign.

The discovery, in early 2016, that NSA hadn't been following the rules for the kind of spying that would have been used with Page while he was in Russia led to a string of other discoveries, which in turn led to the termination of one kind of NSA spying, called "about" collection. But the process of fixing 705(b) and "about" collection continued well into the period when Page was under FISA surveillance, including the times when he was traveling overseas.

All that said, if the government obtained information from outside the time of Carter Page's travels overseas improperly, Trump has only Trump to blame. That's because, even after they did fix the problems with the program in April 2017, the Trump Administration didn't do what the Obama Administration before it had done on numerous occasions: get rid of any data obtained improperly under such conditions. So while the underlying problems with 705(b) were never fixed under the Obama Administration (which is absolutely something that should be laid at his feet) Jeff Sessions and Dan Coats would be responsible for any lasting harm under the problems. The Trump Administration's deviation from past practice in destroying improperly obtained data would be responsible for any harm to Trump.

Ultimately, Nunes' failure to consider for his politicized memo the one FISA practice most likely to have affected Carter Page identifies

the real source of any problems with FISA: a failure of oversight, including from people like Devin Nunes. With the Title VII reauthorization bill he authored, Nunes might have ensured some follow-up to make sure known overseas spying problems were fixed. He might have required the government to make sure it destroyed any data on the Trump campaign it collected while Page was overseas.

Instead, Nunes seems completely unaware that such problems existed.