

THE INCREASING PANIC SURROUNDING DEVIN NUNES' “EXTRAORDINARILY RECKLESS” PLAN TO RELEASE MEMO

I thought I'd chronicle the increasingly senior panic surrounding Devin Nunes' plan – reportedly backed by Trump – to release the Nunes memo without first letting FBI and DOJ review it. Clearly, there's concern this will burn underlying sources for the FISA application(s) described in the report. I don't rule out the belated revelation of something I've been hearing for at least six months – that the Dutch passed on intelligence in real time of APT 29 hacking US targets and had an inside view of the operations – isn't meant as a warning of what will happen if the US further burns the Dutch.

I'm also interested in AAG Stephen Boyd's emphasis that Nunes delegated his review of these documents to Trey Gowdy, perhaps suggesting both will have some kind of liability for any damage that will result from this game of telephone.

Sunday, January 21: FBI denied a copy of Nunes' memo.

“The FBI has requested to receive a copy of the memo in order to evaluate the information and take appropriate steps if necessary. To date, the request has been declined,” said Andrew Ames, a spokesperson for the FBI.

Wednesday, January 24: Richard Burr's Senate Intelligence Committee staffers denied a copy of the memo.

Senate Intelligence Committee Chairman Richard Burr's staff has not been given access to a classified memo drafted by House Intelligence Committee Chairman Devin Nunes, a sign of how closely House Republicans are guarding allegations of Justice Department wrongdoing over surveillance activities in the Russia investigation.

According to three sources familiar with the matter, Burr's staff requested a copy of the memo and has been denied, just as the FBI and Justice Department have also been denied reviewing a copy of the document.

Wednesday, January 24: Trump's Assistant Attorney General for Legislative Affairs Stephen Boyd writes letter noting that releasing memo will violate agreement.

Recent news reports indicate a classified memorandum prepared by House Permanent Select Committee on Intelligence (HPSCI or Committee) staff alleges abuses at the Department of Justice (Department) and the Federal Bureau of Investigation (FBI) in the FISA process. We understand many members of the House of Representatives have views this memorandum and that it has raised concerns.

As you know, we have provided HPSCI with more than 1,000 pages of classified documents relating to the FBI's relationship, if any, with a source and its reliance, if any, on information provided by that source. Media reports indicate that the Committee's memorandum contains highly classified material confidentially provided by the

Department to the Committee in a secure facility.¹

[snip]

In addition, we have also heard that HPSCI is considering making the classified memorandum available to the public and the media, an unprecedented action. We believe it would be extraordinarily reckless for the Committee to disclose such information publicly without giving the Department and the FBI the opportunity to review the memorandum and to advise the HPSCI of the risk of harm to national security and to ongoing investigations that could come from public release. Indeed, we do not understand why the Committee would possibly seek to disclose classified and law enforcement sensitive information without first consulting with the relevant members of the Intelligence Community.

Seeking Committee approval of public release would require HPSCI committee members to vote on a staff-drafted memorandum that purports to be based on classified source materials that neither you nor most of them have seen. Given HPSCI's important role in overseeing the nation's intelligence community, you well understand the damaging impact that the release of classified material could have on our national security and our ability to share and receive sensitive information from friendly foreign governments.

[snip]

Additionally, we believe that wider distribution of the classified information presumably contained within your memorandum would represent a significant deviation from the terms of access granted in good faith by the

Department, HPSCI, and the Office of Speaker Paul Ryan.

The Department renews its request – as previously made in a personal appeal by the Director of the FBI – for an opportunity to review the memorandum in question so that it may respond to the Committee before any vote on public release.

1 To date, the Department has provided detailed briefings and made available to HPSCI documents requested as part of its investigation into Russian influence in the 2016 election. The terms of access stipulated that review of the documents would be limited to the Chairman or his designee, the Ranking Member or his designee, and two staff members each. (Mr. Gowdy reviewed the documents for the majority. Mr. Schiff reviewed the documents for the minority.) Other committees of jurisdiction – the Senate Select Committee on Intelligence, the Senate Committee on the Judiciary, and the House Committee on the Judiciary – have accepted similar procedural safeguards to protect against improper dissemination of information.

Thursday, January 25: DOJ spox (and close Jeff Sessions ally) Sarah Isgur Flores goes on Fox to argue DOJ should get to look at the memo first,

Let us see it first. At this point, nobody in the Senate or the White House or the Department of Justice or FBI has seen this document, and a number of Congressmen have expressed a lot of concern about it. So we would like to see it. Well, I think we'd certainly want to see any evidence of wrong-doing and take action upon that if there is wrong-doing going on. And then, I think we'd want to discuss, I mean, this is classified material for a reason. It has

national security implications. It may have implications for our allies or others in the intelligence community.

Thursday, January 25: Majority Whip and SSCI member John Cornyn says Nunes should let DOJ review the memo.

Cornyn, who has been briefed on Nunes memo, suggests Nunes should listen to DOJ concerns. "We all should pay attention to what the Justice Department's concerns are, and I'm sure the chairman will. It's always good when we communicate and consult with one another," he told me

Thursday, January 25: James Lankford says Nunes should follow "proper declassification procedures."

Update: First, I fixed the dates.

Second, I wasn't aware of this statement from Paul Ryan's spox, sometime in the last day. (h/t Maestro)

A spokesman for Ryan pushed back at the DOJ's characterization of the negotiations.

"As previously reported, the speaker's only message to the Department was that it needed to comply with oversight requests and there were no terms set for its compliance," Doug Andres, the spokesman, said in a statement.

This is fairly breathtaking, as it suggests Ryan (and by association Nunes) are not agreeing to abide by any of the security precautions imposed on the access to highly sensitive case files Nunes obtained.