



Written by [Steve Byas](#) on January 13, 2020

## FISA Court Taps Supporter of FBI Surveillance Practices to Investigate FBI Surveillance Practices

“It’s hard to imagine a worse person the FISC [Foreign Intelligence Surveillance Court] could have chosen outside [James] Comey, [Andy] McCabe, or [Adam] Schiff,” Representative Devin Nunes (R-Cal.) said in response to the announcement that the court had chosen David Kris to investigate the implementation of reforms in the aftermath of the report of the Department of Justice’s Inspector General.



On Friday, FISC presiding Judge James Boasberg picked Kris to construct an “amicus curiae to assist the Court in assessing the government’s response” to the previous order of the court instructing the FBI to make changes to its processes of obtaining warrants to do surveillance of Americans. Just last month, outgoing presiding Judge Rosemary Collyer had told the FBI to “describe any steps taken or to be taken by the Department of Justice or FBI to verify that the United States’ submissions in those matters completely and fully described the material facts and circumstances.” Collyer also asked whether the actions of the investigators had been referred to “the appropriate bar association(s) for investigation or possible disciplinary action.”

Nunes is the ranking member, and former chairman, of the House Intelligence Committee. David Kris is a former official with the Obama administration, and a vocal defender of the surveillance practices of the Federal Bureau of Investigation — practices that were heavily criticized in the report of Justice Department Inspector General Michael Horowitz.

Kris has even written on the left-wing blog Lawfare in support of the much-criticized actions of the FBI, and has appeared on the MSNBC’s *The Rachel Maddow Show* to assure the show’s mostly left-wing audience that the FBI had done no wrong in their investigation of President Donald Trump and other figures such as Carter Page (an aide to the Trump for president campaign).

Amazingly, after working in the administration of President George W. Bush, Kris was highly critical of the justifications for warrantless surveillance used by the Bush Administration. But that was then. Under Obama as an assistant attorney general, Kris emerged as a cheerleader for government surveillance. As he told Maddow in 2018, “FISA applications are typically quite long — they’re big enough that you don’t want to drop one on your foot. They contain a lot of information and detail, because the statute is quite exacting in what it requires the government to establish to get the warrant granted.”

Kris continued, “These applications already substantially undermine the president’s narrative and that of his proxies,” adding that he expected “it’s going to get worse, not better.” Kris also tweeted that “walls” are “closing in” on Trump. Such language was quite common on anti-Trump media such as MSNBC and CNN, indicating little ideological difference between Justice Department officials such as Kris and left-wing media figures such as Maddow. Kris wrote, “The Nunes memo was dishonest. And if it is allowed to stand, we risk significant collateral damage to essential elements of our democracy.”



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In short, as Nunes said, the selection of Kris is “inexplicable.”

Nunes told Sara Carter of Fox News, “It’s a ridiculous choice. The FBI lied to the FISC, and to help make sure that doesn’t happen again, the FISC chose an FBI apologist who denied and defended those lies. The FISC is setting its own credibility on fire.”

In fact, the choice of Kris by the FISC answers a question many have been asking for several months, which is, “Why does the FISC not cite several individuals who have signed warrant requests to the court with contempt, for lying to the court?” The answer could be as simple as the fact that the judges on the special court — set up in 1978 to conduct surveillance for national security reasons — are in accord with the false warrant requests of FBI officials, just so long as it was detrimental to President Donald Trump in the so-called Russia investigation.

Kris even criticized the 2018 memo produced by the House Intelligence Committee when Nunes was its chairman, which argued that the FBI had committed multiple surveillance abuses against Carter Page. DOJ Inspector General Horowitz has since written that Nunes’ memo was correct — a memo that stated the FBI had made materially false representations to the court.

“Of all the people in the swamp ... this is the guy that you come up with?” Nunes asked. “The guy that was accusing me of federal crimes? The guy that was defending the dirty cops at the FBI?”

Among the irregularities discovered by Horowitz was a doctored e-mail sent to the FBI from the CIA concerning Page. The CIA explained to the FBI that Page had contacts with Russians from 2008 to 2013, but Page had already reported these contacts to the CIA, and was in fact serving as an operational contact and informant on Russians business and intelligence interests for the agency.

Despite this, someone within the FBI chose to alter the e-mail to make it appear to the court that the CIA had only said that Page was not an active source for them. The FBI chose to not include in its warrant request to the FISC that Page was a volunteer working with the CIA.

Yet, the FISC has now chosen a person who has downplayed all of these abuses to be conducting its investigation into the alleged abuses! This would seem to indicate that the FISC has little concern about the lack of respect for due process demonstrated by the FBI in its requests for surveillance warrants.

As Nunes said of the court’s lack of concern about the apparent fraud, “The Court must be trying to abolish itself. There is long-term damage.”

Perhaps abolition of the court is the best solution. Lord Acton, the 19<sup>th</sup> century English political philosopher, once said, “Power tends to corrupt, and absolute power corrupts absolutely.”

The FISC has demonstrated that it is as untrustworthy as people such as James Comey in respecting the civil liberties and rights to due process of American citizens.

*Steve Byas is a university instructor of history and government, and author of the book, History’s Greatest Libels. He may be contacted at [byassteve@yahoo.com](mailto:byassteve@yahoo.com)*



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