

C A M P A I G N F O R

ACCOUNTABILITY

March 1, 2018

BY FAX: 202-226-0997

Omar Ashmawy
Staff Director and Chief Counsel
Office of Congressional Ethics
1017 Longworth HOB
Washington, D.C. 20515

RE: Additional Information on Rep. Devin Nunes and HPSCI Staff

Dear Mr. Ashmawy:

On January 25, 2018, Campaign for Accountability (“CfA”), a nonprofit, non-partisan organization, requested that the Office of Congressional Ethics (“OCE”) investigate whether Rep. Devin Nunes (R-CA) and majority staff of the House Permanent Select Committee on Intelligence (“HPSCI”) violated committee rules and House ethics rules by leaking information provided to the committee during the course of an official investigation. Today, we are forwarding additional information about continued leaks.

Background

On March 1, 2018, the *New York Times* published an article reporting that the Senate Intelligence Committee:

has concluded that Republicans on the House Intelligence Committee were behind the leak of private text messages between the Senate panel’s top Democrat and a Russian-connected lawyer, according to two congressional officials briefed on the matter.¹

Copies of the text messages regarding Senator Warner’s attempts to arrange a meeting with Christopher Steele were submitted to the Senate Select Committee on Intelligence (“SSCI”) by Adam Waldman, a lawyer who knows Mr. Steele. In January, one of Rep. Nunes’s staff members asked that the messages be shared with the HPSCI.² “Days later,” the text messages were leaked to *Fox News* “via a secure messaging application.”³ *Fox* published them on February 8, 2018.⁴

¹ Nicholas Fandos, *Senate Intelligence Leaders Say House G.O.P Leaked a Senator’s Texts*, *New York Times*, March 1, 2018, available at <https://www.nytimes.com/2018/03/01/us/politics/senate-intelligence-nunes-leaks.html>.

² *Id.*

³ *Id.*

⁴ Ed Henry, *Democratic Sen. Mark Warner Texted with Russian Oligarch Lobbyist in Effort to Contact Dossier Author Christopher Steele*, *Fox News*, February 8, 2018, available at <http://www.foxnews.com/politics/2018/02/08/democratic-sen-mark-warner-texted-with-russian-oligarch-lobbyist-in-effort-to-contact-dossier-author-christopher-steele.html>.

Senators Richard M. Burr (R-NC) and Mark Warner (D-VA), respectively, the chair and ranking member of the SSCI, were so concerned about the leak they met with House Speaker Paul Ryan, who apparently implied he was powerless to act, replying only that he heard their complaints but did not run the committee, though Sen. Burr now states he did not conclude the HPSCI was the source of the leaked texts and claims the meeting with Speaker Ryan was merely to update him on the Senate's investigation.⁵ Mr. Warner has declined to comment stating only, "No matter who interferes, we are going to continue our bipartisan investigation to get to the truth."⁶

Separately, a lawyer for Mr. Waldman also concluded that HPSCI had leaked the information and sent a letter to Rep. Nunes complaining about the leak.⁷

Legal Analysis

Leaking Confidential Information

As CfA explained in our January 25, 2018 letter, House rules clearly ban leaks of confidential information. House Rule 23, clause 2, provides "[a] Member . . . shall adhere to the spirit and the letter of the Rules of the House and to the rules of duly constituted committees thereof." This rule has been interpreted to mean that "Members, officers and employees may not do indirectly what they would be barred from doing, directly."⁸

HPSCI rules specifically prohibit members of the committee and committee staff from discussing, disclosing, or causing to be discussed or disclosed "any classified information received by the Committee from any source," or "[t]he substance of any hearing that was closed to the public pursuant to these rules or the Rules of the House."⁹ HPSCI's rules also provide that "[a]ny records or notes taken by any person memorializing material otherwise prohibited from disclosure by members of the Committee and Committee staff . . . including . . . the substance of any hearing or briefing that was closed to the public, shall remain Committee material subject to these rules and may not be publicly discussed, disclosed, or caused to be publicly discussed or disclosed, unless authorized by the Committee . . ."¹⁰

Therefore, Rep. Nunes and staff members acting at his direction have violated House rules by leaking the text messages obtained from the SSCI.

⁵ *Id.*; Manu Raj, *Twitter*, March 1, 2018, available at <https://twitter.com/mkraju/status/969266897782038530>.

⁶ Manu Raj, *Twitter*, March 1, 2018, available at <https://twitter.com/mkraju/status/969268370934726657>.

⁷ Nicholas Fandos, *Twitter*, March 1, 2018, available at <https://twitter.com/npfandos/status/969254883542126593>.

⁸ *Id.*, fn. 78, see also House Comm. on Standards of Official Conduct, *House Ethics Manual* at 17 (2008 ed.).

⁹ Permanent Select Committee on Intelligence, Rule 12(a)(1), Rules of Procedure (115th Cong.), available at https://intelligence.house.gov/uploadedfiles/hpsci_rules_of_procedure_-_115th_congress.pdf.

¹⁰ Rule 12(a)(4).

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Conclusion

As the HPSCI appears to be regularly leaking confidential information, the OCE should immediately find substantial reason to believe Rep. Nunes, and/or members of his staff acting at Rep. Nunes' direction, willfully disclosed confidential information in violation of HPSCI duties of non-disclosure and House rules, and forward this matter to the House Committee on Ethics for further action.

We look forward to your attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Dan E Stevens", with a long horizontal flourish extending to the right.

Daniel E. Stevens
Executive Director