

LINDSEY GRAHAM, CHUCK GRASSLEY, AND MIKE LEE EXHIBIT UTTER IGNORANCE ABOUT FBI CERTIFICATION ON FISA APPLICATIONS

Jim Comey's testimony in Lindsey's Graham's purported investigation of FISA – by which Lindsey means using the Carter Page FISA application as a stand-in for the Russian investigation more generally while remaining silent about both DOJ IG findings that the problems identified with the Page application are true more generally, and about ongoing 702 abuses under Bill Barr and Chris Wray – just finished.

As a Comey hearing connoisseur, it wasn't bad. Notably, he repeatedly refused to answer questions for which the presumptions were false.

But as a connoisseur of hearings on FISA and FBI oversight, it was an atrocity.

This hearing was meant to talk about the dangers of counterintelligence investigations that unfairly treat people as Russian agents, meaning Page. But by my count, on at least 19 occasions, Republicans raised the investigation into Christopher Steele's primary subsource, Igor Danchenko, for being a suspected Russian Agent. The investigation lasted from 2009 to 2011. It used many of the same tactics used against Page, Mike Flynn, and Paul Manafort. While the FBI closed the investigation in 2011 because Danchenko left the country – meaning they never affirmatively decided he wasn't a Russian spy – neither did they decide he was.

That makes Danchenko exactly like Carter Page, someone once suspected of and investigated over a period for being a Russian Agent, but about

whom the investigation was inconclusive, with remaining unanswered questions.

If you believe in due process in this country, you treat Igor Danchenko exactly like you'd like Carter Page to be treated.

And Republicans – starting and ending with Lindsey Graham – over and over again – stated that Danchenko was a suspected Russian agent in 2016 (which is plausible but for which there is no evidence) and even, repeatedly, stated as fact that he was a Russian spy. Lindsey claimed at one point that “the Primary Subsource was a Russian agent.” He later called Danchenko, “Igor the Russian spy.”

Republicans today did everything they complain was done with Carter Page, but they did so in a public hearing.

Danchenko may very well have been still suspect in 2016; that may very well have been something to consider when vetting the dossier (though as Comey noted, it could either corroborate that Danchenko had the sources he claimed or raise concerns about Russian disinformation). That absolutely should have been a factor to raise concerns about Russian disinformation. But everything in the public record shows that Danchenko was, in 2016, in exactly the same status Page will be in 2022, someone against whom an inconclusive foreign agent investigation was closed years earlier.

Still worse, at a hearing in which Lindsey Graham and other Republican Senators claimed they wanted to fix the problems in the FISA process identified as part of the Carter Page application, one after another – including Graham, Chuck Grassley, Mike Lee, Josh Hawley, and Joni Ernst – betrayed utter ignorance about the role of the FBI Director's certification in a FISA application.

By statute, the FBI Director (or National Security Advisor) certification requires a very limited set of information, basically explaining why the FBI wants to and can use a FISA warrant

rather than a criminal warrant, because they believe the desired information in part pertains to a national security threat.

(6)a certification or certifications by the Assistant to the President for National Security Affairs, an executive branch official or officials designated by the President from among those executive officers employed in the area of national security or defense and appointed by the President with the advice and consent of the Senate, or the Deputy Director of the Federal Bureau of Investigation, if designated by the President as a certifying official—

(A)that the certifying official deems the information sought to be foreign intelligence information;

(B)that a significant purpose of the surveillance is to obtain foreign intelligence information;

(C)that such information cannot reasonably be obtained by normal investigative techniques;

(D)that designates the type of foreign intelligence information being sought according to the categories described in section 1801(e) of this title; and

(E)including a statement of the basis for the certification that—

(i)the information sought is the type of foreign intelligence information designated; and

(ii)such information cannot reasonably be obtained by normal investigative techniques;

Thanks to the declassification of the Carter Page FISA applications, we can see what the declaration Comey signed looked like. In 8 pages tracking the statutory requirement, it explains

(in redacted language) what kind of foreign intelligence information FBI hoped to obtain from the FISA, and why normal investigative methods are not sufficient to achieve those objectives.

Not a shred of that declaration pertains to the underlying affidavit.

And Comey tried to alert people to this, over and over, in the hearing, stating that his certification was very limited, even while taking responsibility in the affidavit that he didn't sign (and once, in response to a question from Lindsey, stating explicitly that he had not signed). Rather than asking him what his certification entailed and how he thought about that responsibility, Republican Senators entrusted with overseeing FISA insinuated over and over, falsely, that he should have known the underlying pieces of evidence used to obtain the FISA.

Maybe he should have. He frankly exhibited some awareness of what was in that.

But that's not what the law requires. And if the Senate Judiciary Committee wants FBI Directors signing FISA applications to have that kind of granular awareness of case, they need to rewrite the law to mandate it.

Instead, they simply exhibited their utter lack of awareness of what FISA law requires.

Some of these Senators, notably Grassley, have been overseeing FISA for decades. Lindsey heads this committee. Mike Lee is easily among the Senators who is best informed about FISA. And yet none of them know – not even with a declassified application to read – what it is that the FBI Director certifies.