

Congress Should be “Guardians” of the Intelligence Community



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May 13 · 3 min read



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In April, the Intelligence Community (IC) published its 2021 Annual Threat Assessment of dangers facing the United States, and its leadership testified at public hearings before the Senate and House intelligence committees.

It is a measure of the moment that the most notable feature of these hearings is that they happened at all. These were the first public hearings on global threats in over two years. During the last hearing, the intelligence chiefs’ testimony about the state of the world

contradicted President Donald Trump’s ostentatiously optimistic tweets, triggering the then-president to taunt his own appointees.

Congress should take the opportunities presented by a new administration, new agency heads, and new Intelligence Committee members to embrace a reinvigorated form of intelligence oversight — where members are neither shallow supporters nor implacable critics but, in the words of scholar Loch K. Johnson, “guardians” of the IC. In this view, Congress provides accountable oversight of the intelligence enterprise, supports its people, and — critically in this era of apocalyptic political warfare — protects it from baseless attacks of partisan malfeasance.

Let’s consider the historical context. Congressional intelligence oversight began in earnest after the Church and Pike Committee investigations of 1975 revealed that the IC engaged in troubling abuses in the early decades of the Cold War. These revelations led to what has been called a “grand bargain” among the intelligence agencies, Congress, and the American people.

“The central elements of the grand bargain were these: the president and his intelligence bureaucracy were allowed to maintain robust surveillance and espionage capacities, including domestically,” Jack Goldsmith and Benjamin Wittes wrote, “[b]ut in exchange, Congress subjected them [to] significant legal restrictions on how they collected, analyzed, and disseminated intelligence information.” These restrictions were implemented by, among others, the Senate and House intelligence committees. “The idea was that the use of [the intelligence agencies’] powers would be documented and watched by institutions that could be trusted to keep secrets but would act as credible surrogates for public oversight mechanisms,” wrote Goldsmith and Wittes.

Since then, Congressional representatives have approached their oversight roles in different ways. In a seminal article, *The Church Committee Investigation of 1975 and the Evolution of Modern Intelligence Accountability*, Loch Johnson surveyed the post-1975 history and categorized Congressional oversight as falling into four buckets:

(1) “Ostriches,” who abdicated rigorous oversight and deferred to Executive Branch prerogatives;

(2) “Cheerleaders,” who were unalloyed intelligence boosters;

(3) “Lemon -suckers,” who faulted the IC no matter what; and

(4) “Guardians,” who were “partners and critics” of the intelligence agencies.

Guardians provided “a persistent examination of budgets and operations” while “demanding competence and law-abiding behavior.” They “have an obligation” to explain to the public the value of American intelligence agencies and programs, “provide a defense” when the secret agencies “legitimately need a friend when under public scrutiny,” “search for and acknowledge program flaws, and advocate their correction,” and are objective, above all. This model, Johnson wrote, “fits best into the framework of democratic theory.”

A corollary to Johnson’s definition should be added: guardians have a duty to defend the IC from unfounded charges of politicization or politically motivated surveillance. That is because the IC cannot defend itself from these allegations without entering the political fray and furthering the mistaken view that the intelligence enterprise is partisan.

Lawmakers should embrace their roles as guardians. They need to serve as credible surrogates for public oversight by scrutinizing the intelligence agencies seriously, criticizing them when necessary, and defending them amid smashmouth politics that see shadowy cabals everywhere. For example, Congress should ensure reforms are implemented to protect against specific errors and omissions in FISA warrant applications, while refraining from broadcasting unjustified claims of deep-state conspiracies.

There is reason to think Congress may be adopting this role. At the recent April 2021 hearings, lawmakers, particularly in the Senate, generally engaged in substantive colloquies with the agency heads. Senate committee leadership also issued a strong nonpartisan call to investigate the “Havana syndrome” of mysterious neurological attacks on government personnel in Cuba and elsewhere.

The continued success of intelligence agencies’ “grand bargain” will rely on the IC maintaining its legitimacy within a vibrant framework of objective oversight. Guardians on Capitol Hill will be key to this success.

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