

THE BROOKINGS INSTITUTION

5 on 45:
On Congress investigating Russia

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PITA: You're listening to 5 on 45 from the Brookings Podcast Network: analysis and commentary by Brookings experts on today's news regarding the Trump administration.

REYNOLDS: My name is Molly Reynolds, I am a fellow in Governance Studies at The Brookings Institution, and I'm here with my colleague Susan Hennessey, also a fellow in Governance Studies, to talk about Congress and calls for an investigation into the Russia situation.

HENNESSEY: So, late last night the story broke that Attorney General Jeff Sessions had met with the Russian ambassador to the United States twice over the summer during the campaign. Attorney General Sessions had failed to disclose those contacts when he was asked, although it's not necessarily clear whether or not he discussed the campaign during those meetings. So this led to a lot of calls for Attorney General Sessions to recuse himself from any investigations into the Trump campaign and Russia – there are a number ongoing in the executive branch currently. It's also led to calls for Sessions to appoint a special counsel – an independent special counsel, as well – to investigate these matters.

Whenever we're talking about special counsels or recusal, the primary mechanisms are political. There aren't really enforceable laws or rules on the matter, it's really about appearances and whether or not an Attorney General feels they have to. But it does raise questions about Congressional investigations and it increases pressure on Congress to undertake independent action whenever there is a perception of a lack of legitimacy of executive branch investigations. So really, the question before us now is

what can we expect Congress to do, both with existing investigations and future investigations into the Trump-Russia connection?

REYNOLDS: So currently, we have investigations ongoing by both the Senate Intelligence Committee which has been at work for a little while, and the House Intelligence Committee, which just recently announced that they would be investigating the matter. When we think about how members of Congress generally approach investigating alleged wrongdoing, there are two important questions for us to consider. One, do enough members want to engage in an investigation? And two, if there are enough members who want to investigate, can they overcome collective action problems present in mounting a response?

The answer to the first question, especially when the target of the investigation is a member of one's own political party, often depends on whether not investigating creates higher political cost than doing the investigation. In this particular case, it's also worth remembering that members of Congress don't particularly like being lied to, which may be part of why reports that Sessions may have provided false information as part of his confirmation process are getting so much attention.

The answer to the second question gets us to specific issues about how an investigation might proceed. So it's important to think about how that investigation might look, and there are a couple of options in front of Congress. One is to have Congress's regular committees use their regular powers to investigate. The second would be to have something of a select committee, formed by resolution, charged with investigating a specific situation. The third, which some have called for in this case, is an independent commission. The challenge in formulating an independent commission is

that that would require the passage of a statute creating that commission, and assuming that the Trump administration would not be interested in having that kind of investigative body, we'd expect that the president would veto any such legislation, creating the need for veto-proof majorities in both chambers which would be a very heavy lift.

HENNESSEY: Yeah, so these are the basic options on the table – either the SSCI investigation, which has been the principle enquiry in Congress, proceeding within their own jurisdiction and authority; the creation of this bipartisan commission, sort of in the model of the 9/11 Commission; or the formation of a new select committee. So select committees in investigations are not unusual. Select committees were used, for example, in Watergate, Iran-Contra – there are a number of historical examples. A lot of people have sort of warm, fuzzy feelings about bipartisan commissions, in part because the 9/11 Commission, which is really the only commission of its type in a serious investigation, is widely regarded as a success. However, in the context of the 9/11 Commission, both the executive branch and the legislative branch were very supportive of that effort and of that commission, and so there weren't fights over things like the production of documents. So even if a bipartisan commission could be formed, actually a select committee might be preferable because a select committee tends to be a little bit more powerful and agile. In having those kinds of potentially hostile confrontations with the executive, the select committee is better able to assert the constitutional rights of Congress in court if they have to go to court in order to vindicate their congressional and constitutional rights.

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