



Why an independent counsel is necessary in an election probe

BY EJ HURST II, OPINION CONTRIBUTOR - 04/14/17 08:20 AM EDT

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The claims were that a sitting president was a Muslim, a socialist and a Kenyan national.

Then he was sending the U.S. military to declare martial law in [Texas](#).

Then his former Secretary of State was running a child sex-trafficking ring out of a [Washington, D.C., pizzeria](#).

These and too many other tall tales have infected our information streams, without any support besides their readers' deep desire for them to be true.

Today we know that some outright lies came from [Russian operatives](#) trying to affect our nation's political structures, and infest our very thoughts.

So far, Russia's efforts to cleave our Republic have been a cyber espionage masterstroke. Perhaps not since the Civil War have Americans been so divided — or so hateful about it.

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Rather than seeking a thorough, transparent investigation, though, some now seem inclined to protect a president of their own Party. [Rep. Ted Yoho \(R-Fla.\)](#) expressed the real loyalties of some in Congress, when he tried to defend House Intelligence Committee Chairman [Devin Nunes \(R-Calif.\)](#):

"You've got to keep in mind who he works for," Yoho [said during an interview on MSNBC](#). "He works for the president, and he answers to the president."

Never mind that Congress is a separate, co-equal branch of government elected by us to check and balance the president, not answer to him. Never mind that Mr. Yoho offered only another "I misspoke" defense, when he "misspoke" about a fundamental constitutional principle — separation of powers — that any high school graduate should remember.

A House member defended an Intelligence Committee investigator — the chairman, no less — who ran to a subject of the investigation with information that was [provided by the subject's employees](#). At the [subject's house](#). To see "evidence" that [Nunes never shared with his own Intelligence Committee co-investigators](#) (though congressional investigators now have access).

As the investigations continue, despite pleas of [partisan witch-hunting](#), 2016 players are rushing to retroactively [register as foreign agents](#). Lies about Russian contacts even cost national security adviser Michael Flynn his [weeks-old job](#). Former campaign manager Paul Manafort is being investigated by multiple nations, including over money laundering allegations. And we also now know that a [FISA warrant was issued for a Trump advisor](#), Carter Page, for at least contacts and information-sharing with a Russian intelligence operative. Setting aside the "exculpatory no" reflexively spouted by these persons, many questions remain about what influence Russia's oligarchy — a system beholden to Russian leader Vladimir Putin — had over which Americans.

Only an ethics complaint [forced Mr. Nunes to stop leading the House investigation](#). The right-wing group Freedom Watch has [filed](#) a separate ethics complaint against ranking Democrat Adam Schiff, clouding his already challenged substitution. Not even the Intelligence Committee in our hyperpartisan House of Representatives can review these grave national security allegations without partisan sniping and distrust.

The Senate Intelligence Committee has stepped forward, already hearing public testimony about some of what we know Russia has done. But that testimony came from an [intelligence community](#) discounted by the president and his defenders, and accused of partisan spying.

In the related news conference, Sens. [Richard Burr \(R-N.C.\)](#) and [Mark Warner \(D-Va.\)](#) (Intelligence Committee Chair and ranking Democrat, respectively) put forth an upbeat, [bipartisan face](#). That was also the face put forth by the House Intelligence Committee, though, before Rep. Nunes was caught answering to the president. Burr was also an adviser to the president's campaign, and [he has already defended himself](#) over a February telephone call on the president's behalf.

Likely that particular call was appropriate. And the right can certainly point to Mark Warner's early support of Hillary Clinton, and his ongoing opposition to the president, as evidence of his own appearances of impropriety and conflicted interest. But that is the problem.

We are left with currently collegial partisans in a hyperpartisan legislature, with crucial midterm elections just months away. In these campaign circumstances, those appearances of impropriety and conflicted interest are what undermine fact-finding. It is those appearances of impropriety, in all quarters, that we must temper if the republic is to survive.

Perhaps the Senate investigation would prove itself bipartisan enough to investigate everything about the 2016 election. One can be skeptical, though, that a Senate run by Mitch McConnell will now be interested in finding objective facts instead of protecting the power McConnell has spent a lifetime accumulating — the last eight years of which involved simply obstructing any successes that might be credited to his political opponents.

Congress faces some of its lowest-ever approval ratings. Its members are (dis)trusted solely for the “R” or “D” they carry — except the “RINOs” distrusted by the far right too (conservative bulwark Matt Drudge even suspects that the GOP Congress is sabotaging the GOP president). Meanwhile, commenters, bots and message board trolls across the political spectrum scream “fake news!” as a terse conclusion instead of the start of a reasoned and detailed argument.

Our citizens have somehow become satisfied that no speaker they agree with needs much evidence, and no evidence from the enemy — their neighbors — will be acceptable.

Who wins then, in a republic without facts?

The Putin Oligarchy, and Mother Russia.

What can be done?

Appoint an independent counsel.

The most important thing an independent counsel can offer is one objective set of facts that we all can — must — agree on. As Burr reminded us at the March 30 news conference: “We’re all targets of a sophisticated and capable adversary.” But there are problems with this plan.

Foremost, the independent counsel statute lapsed in 1999. Modern independent counsels can be initiated by the attorney general — here, the deputy AG, since Attorney General Jeff Sessions has already recused himself from the Russian investigation. Or, the (Republican) Congress can pass a bill for the (Republican) president to sign into law, after which his administration instantly becomes a target of the investigation.

Even if the Republican Congress would allow an investigation that some deem a “witch hunt,” the president/target seems likely to veto the bill. A specific independent counsel act would ultimately seem to need the support of two-thirds in Congress.

There is a separate problem: who to appoint as independent counsel. The whole point is to have a (relatively) trusted lawyer give an objective, nonpartisan assessment. That alone limits potential ICs. This investigation also requires the highest security clearances, further rarifying the field. Even if an independent counsel’s office can somehow be established, there are few lawyers who would meet the job requirements.

But until we have one set of facts, we will remain two Americas in mortal danger. It is time we quit fighting with our siblings, and go see who is trying to break into our house.

That only happens when a truly independent investigation provides unassailably objective facts. That independent investigation can best happen with an independent counsel. And it seems that an independent counsel can only happen if we, the constituents, insist that on a full and fair investigation — and prosecution of all wrongdoers, whatever party they attend.

E.J. Hurst, II is an attorney based in Durham, N.C., who practices in the federal court system. He concentrates on criminal sentencing, appeals and habeas corpus matters.

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