



## **Political Intelligence: The New Oxymoron**

**By Eric Wang**

*Roll Call*

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There used to be a time when “military intelligence” was a prime example of an oxymoron. But as our brave men and women in uniform have prosecuted two major wars over the past decade so valiantly and selflessly, dumping on our military has fallen out of fashion. So what, nowadays, can we cite as the prototype of an oxymoron? May I suggest “political intelligence,” which seems to be the distraction du jour on Capitol Hill.

“Political intelligence” first became a major issue last year, when Congress was debating the STOCK Act, which was meant to address concerns that members were benefiting from trading in companies that were subject to their jurisdiction. Sen. [Charles E. Grassley](#), R-Iowa, sponsored an amendment that would have imposed registration and reporting requirements on “political intelligence” professionals akin to the requirements for lobbyists. The amendment was watered down to require a Government Accountability Office study on the issue, which the agency issued last month.

At about the same time the GAO was finalizing its study, “political intelligence” gained renewed attention when publicly traded shares of several major health care firms surged. Stephanie Carlton, until recently a legislative aide to Sen. [Orrin G. Hatch](#), R-Utah, is reported to have shared with a financial consulting firm that she was “hopeful” the White House would increase funding for Medicare Advantage. Even though Carlton cautioned that her prediction was the “lowest on [her] optimism score,” the news of a potential windfall for the health insurance industry allegedly sparked the market rally. (The genesis of Carlton’s assessment was a supposed deal whereby Hatch would support a White House nominee in exchange for the president’s support of Medicare Advantage.) Now, the Securities and Exchange Commission, Justice Department and Grassley are investigating the matter.

Private interests benefiting from insider government information (the “political intelligence”) may be disturbing at first blush. But the political class’s unsophisticated response thus far gives us little reassurance that it is capable of addressing this issue with much intelligence. Politicians have rushed to blame the legal, lobbying and financial services firms trading in “political intelligence.” On his website, Grassley accuses these firms of “operating behind closed doors out of the public’s eye.” But such rhetoric is more than a little ironic, considering that these firms are merely reporting to their clients

about the closed-door meetings of government officials and staff.

As a preliminary matter, it is unclear what legal basis even exists for government investigations into this issue. As last month's GAO study correctly notes, "No laws or ethics rules specifically govern political intelligence activities." While securities laws prohibit trading based on confidential information pertaining to corporations, they do not extend to insider information pertaining to the government. Nor does the ballyhooed STOCK Act, which only prohibits federal officials from trading based on information derived from their official duties. The congressional ethics rules are similarly limited. The House Ethics Manual prohibits members and staff from "us[ing] information received confidentially in the performance of governmental duties for making private profit." Like the STOCK Act, the House ethics provision applies only to trading by members and staff. (The Senate does not have its own specific ethics rule on this issue.)

To the extent the disclosure of confidential government deal-making is even a problem, we must be careful not to paint with too broad of a brush in our response. The ability of third parties to disseminate information about the government is essential to a functioning democracy. The public has a right to be heard by their government officials on issues of public importance. The public cannot express informed opinions about these matters unless they know what is going on behind closed doors in Washington.

The Supreme Court established this bedrock principle in the "Pentagon Papers" case, which upheld The New York Times' right to publish classified information that was critical of the country's military involvement in Vietnam. More recently, we have seen embarrassing backroom deals like the "Cornhusker Kickback," the "Louisiana Purchase," and "Gator Aid" exposed during the legislative negotiations over Obamacare. Any attempts to regulate "political intelligence" must acknowledge the public's right to know and find out what is happening in government.

More fundamentally, we need to look at how government itself functions. Ours is a republican form of government, and the legislative process may become unwieldy if lawmakers were constantly subject to the instant demands of 300 million constituents. However, to the extent our government officials need to negotiate legislation and policy in private, we cannot blame stakeholders for trying to glean intelligence on those discussions. There is also something askew when government decisions can add or subtract billions of dollars every day from private companies' bottom lines. Perhaps the problem in our system isn't "political intelligence"; it's the unintelligent policy of giving so much power to the political class to choose economic winners and losers.

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