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*Congressional Oversight Overlooked: Police Patrols versus Fire Alarms**

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Scholars have often remarked that Congress neglects its oversight responsibility. We argue that Congress does no such thing: what appears to be a neglect of oversight really is the rational preference for one form of oversight—which we call fire-alarm oversight—over another form—police-patrol oversight. Our analysis supports a somewhat neglected way of looking at the strategies by which legislators seek to achieve their goals.

Scholars often complain that Congress has neglected its oversight responsibility: despite a large and growing executive branch, Congress has done little or nothing to oversee administrative compliance with legislative goals. As a consequence, we are told, Congress has largely lost control of the executive branch: it has allowed the executive branch not only to grow but to grow irresponsible. In popular debate as well as congressional scholarship, this neglect of oversight has become a stylized fact: widely and dutifully reported, it is often bemoaned, sometimes explained, but almost never seriously questioned.¹

We question it. What has appeared to scholars to be a neglect of oversight, we argue, really is a preference for one form of oversight over another, less-effective form. In so arguing, we develop a simple model of congressional choice of oversight policy, offer evidence to support the model, and draw from it further implications regarding bureaucratic discretion and regulatory legislation. More generally, we model the choice by policy makers of an optimal enforcement strategy, given opportunity costs, available technology, and human cognitive limits.

The Model

Congressional oversight policy concerns whether, to what extent, and in what way Congress attempts to detect and remedy executive-branch violations of legislative goals. Our model of congressional choice of

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¹ See Bibby, 1966, 1968; Dodd and Schott, 1979; Fiorina, 1977a,b, 1982b; Hess, 1976; Huntington, 1973; Lowi, 1969; Mitnick, 1980; Ogul, 1976, 1977; Ripley, 1978; Scher, 1963; Seidman, 1975; Woll, 1977. The following remarks by Pearson (1975) succinctly exemplify this view: "Paradoxically, despite its importance, congressional oversight remains basically weak and ineffective" (p. 281). "Oversight is a vital yet neglected congressional function" (p. 288).

oversight policy rests on a distinction between two forms or techniques of oversight:

POLICE-PATROL OVERSIGHT Analogous to the use of real police patrols, police-patrol oversight is comparatively centralized, active, and direct: at its own initiative, Congress examines a sample of executive-agency activities, with the aim of detecting and remedying any violations of legislative goals and, by its surveillance, discouraging such violations. An agency's activities might be surveyed by any of a number of means, such as reading documents, commissioning scientific studies, conducting field observations, and holding hearings to question officials and affected citizens.

FIRE-ALARM OVERSIGHT Analogous to the use of real fire alarms, fire-alarm oversight is less centralized and involves less active and direct intervention than police-patrol oversight: instead of examining a sample of administrative decisions, looking for violations of legislative goals, Congress establishes a system of rules, procedures, and informal practices that enable individual citizens and organized interest groups to examine administrative decisions (sometimes in prospect), to charge executive agencies with violating congressional goals, and to seek remedies from agencies, courts, and Congress itself. Some of these rules, procedures, and practices afford citizens and interest groups access to information and to administrative decision-making processes. Others give them standing to challenge administrative decisions before agencies and courts, or help them bring alleged violations to congressmen's attention. Still others facilitate collective action by comparatively disorganized interest groups. Congress's role consists in creating and perfecting this decentralized system and, occasionally, intervening in response to complaints. Instead of sniffing for fires, Congress places fire-alarm boxes on street corners, builds neighborhood fire houses, and sometimes dispatches its own hook-and-ladder in response to an alarm.

The distinction between police-patrol and fire-alarm oversight should not be confused with the distinction that sometimes is drawn between *formal* and *informal* oversight, which differ in that formal oversight activities have oversight as their principal and official purpose, whereas informal oversight activities are incidental to other official functions, such as appropriations hearings. Both can involve direct and active surveillance rather than responses to alarms. (See Dodd and Schott, 1977; Ogul, 1977.)

Our model consists of three assumptions:

TECHNOLOGICAL ASSUMPTION Two forms of oversight are available to Congress: police-patrol oversight and fire-alarm oversight. Congress

can choose either form or a combination of the two, making tradeoffs between them in two circumstances: (1) When writing legislation, Congress can include police-patrol features, such as sunset review, or fire-alarm features, such as requirements for public hearings. (2) When it evaluates an agency's performance, Congress can either call oversight hearings to patrol for violations of legislative goals or else wait for alarms to signal potential violations.

MOTIVATIONAL ASSUMPTION A congressman seeks to take as much credit as possible for the net benefits enjoyed by his potential supporters—by citizens and interest groups, within his constituency and elsewhere, whose support can help him win reelection. This means, in part, that a congressman seeks to avoid as much blame as possible for the net costs borne by his potential supporters.

INSTITUTIONAL ASSUMPTION Executive agencies act as agents of Congress and especially of those subcommittees on which they depend for authorizations and appropriations.

The Motivational Assumption is closely tied to Mayhew's celebrated reelection model (1974) and to the blame-shirking model of Fiorina (1982a). The Institutional Assumption is found in Baldwin (1975), Ferejohn (1981), Joskow (1974), McCubbins (1982a,b), and Mitnick (1980). Although not previously stated, the Technological Assumption seems to us to be uncontroversial.

That cannot be said of the Motivational Assumption, which depicts congressmen as pure politicians, single-mindedly pursuing reelection. To this picture one might object that real congressmen are not just politicians but statesmen, pursuing justice and the public interest, acting according to various moral and ideological principles, even at some cost to their reelection prospects.

We will argue, however, that if the Motivational Assumption were replaced by the assumption that congressmen act strictly as statesmen, our conclusions regarding oversight would still be derivable, although in a somewhat different way. Our analysis has less to do with specific legislative goals than with optimal strategies for enforcing compliance with legislative goals of any sort.

Consequences

Three important consequences follow from our model:

CONSEQUENCE 1 To the extent that they favor oversight activity of any sort, congressmen tend to prefer fire-alarm oversight to police-patrol oversight.

Our argument for Consequence 1 is that a congressman's objective, according to the Motivational Assumption, is to take as much credit as

possible for net benefits enjoyed by his potential supporters and that he can do so more efficiently under a policy of fire-alarm oversight than under a police-patrol policy, for three reasons:

First, congressmen engaged in police-patrol oversight inevitably spend time examining a great many executive-branch actions that do not violate legislative goals or harm any potential supporters, at least not enough to occasion complaints. They might also spend time detecting and remedying arguable violations that nonetheless harm no potential supporters. For this they receive scant credit from their potential supporters. According to the Motivational Assumption, then, their time is largely wasted, so they incur opportunity costs. But under a fire-alarm policy, a congressman does not address concrete violations unless potential supporters have complained about them, in which case he can receive credit for intervening. So a unit of time spent on oversight is likely to yield more benefit for a congressman under a fire-alarm policy than under a policy-patrol policy. As a result, a fire-alarm policy enables congressmen to spend less time on oversight, leaving more time for other profitable activities, or to spend the same time on more personally profitable oversight activities—on addressing complaints by potential supporters. Justly or unjustly, time spent putting out visible fires gains one more credit than the same time spent sniffing for smoke.

Second, under a realistic police-patrol policy, congressmen examine only a small sample of executive-branch actions. As a result, they are likely to miss violations that harm their potential supporters, and so miss opportunities to take credit for redressing grievances, however fair the sample. Under a fire-alarm policy, by contrast, potential supporters can in most cases bring to congressmen's attention any violations that harm them and for which they have received no adequate remedy through the executive or judicial branch.

Third, although fire-alarm oversight can be as costly as police-patrol oversight, much of the cost is borne by the citizens and interest groups who sound alarms and by administrative agencies and courts rather than by congressmen themselves. A congressman's responsibility for such costs is sufficiently remote that he is not likely to be blamed for them by his potential supporters.

CONSEQUENCE 2 Congress will not neglect its oversight responsibility. It will adopt an extensive and somewhat effective (even if imperfect) oversight policy.

This is because one of the two forms of oversight—the fire-alarm variety—serves congressmen's interests at little cost. When his potential supporters complain of a violation of legislative goals, a congressman gains credit if he eliminates the cause of the complaint. By virtue of the Institutional Assumption, he often can be reasonably effective in elimi-

nating such causes. Beyond establishing and perfecting the system and addressing some complaints, fire-alarm oversight is almost costless to congressmen: others bear most of the cost.

CONSEQUENCE 3 Congress will adopt an extensive and somewhat effective policy of fire-alarm oversight while largely neglecting police-patrol oversight.

This just summarizes Consequences 1 and 2.

Misperception

Faced with an apparent fact he finds puzzling, unfortunate, or otherwise worthy of attention, a scientist has two alternatives: (a) to accept the fact and try to explain it, or (b) to question the *apparent* fact and try to explain its appearance. In the case at hand, students of Congress have, for the most part, chosen (a): they have uncritically agreed that Congress neglects its oversight responsibility and have tried to explain this neglect.

Here are the three main explanations found in the literature, along with a brief critical comment on each:

COMPLEXITY Because public-policy issues are so complex, Congress has had to delegate authority over them to a large, complex, technically expert bureaucracy, whose actions it is unable effectively to oversee (Lowi, 1969; Ogul, 1977; Ripley, 1969; Seidman, 1975; Woll, 1977).

Comment: Given sufficient incentives, as Fiorina (1982a) observes, Congress has found the capacity to tackle a number of complex issues itself. A striking example is the tax code (Jaffe, 1973, pp. 1189-90). What is more, there is no evident reason why Congress should respond to the complexity of issues by creating a large, expert bureaucracy without also creating a large, expert congressional staff—one sufficiently large and expert, not only to help decide complex issues, but to help oversee a large, expert bureaucracy.

GOOD GOVERNMENT To serve the public interest, Congress has established regulatory and other executive-branch agencies based on expertise and divorced from politics. Because these agencies are designed to serve the public interest, whereas Congress is influenced by special-interest lobbies, oversight not only is unnecessary but might be regarded as political meddling in processes that ought to remain nonpolitical (Lowi, 1969).

Comment. Whatever the original intent, it is no longer plausible in most cases to suppose that the public interest is best served by a bureaucracy unaccountable to Congress and, therefore, unaccountable to the electorate.

DECENTRALIZATION Because congressional decisions are made, for the most part, by a large number of small, relatively autonomous subcommittees with narrow jurisdictions, general oversight committees tend to be weak (Dodd and Schott, 1979).

Comment: At most this explains why congressional oversight responsibilities are not centralized. It does not explain why they are neglected. If anything, subcommittee specialization should enhance congressional oversight over individual agencies. Subcommittees controlling authorizations and appropriations might be in a better position to do oversight than so-called oversight committees.

Regarding the apparent fact that Congress neglects oversight, we choose alternative (b) over (a): what appears to be a neglect of oversight can be explained as a preference by congressmen for fire-alarm over police-patrol oversight. We have already argued that congressmen have this preference. Scholars who decry the neglect of oversight have, we suggest, focused on an single form of oversight: they have looked only for police-patrol oversight, ignoring the fire-alarm alternative—and there-with the major part of actual oversight activity. Observing a neglect of *police-patrol* oversight, they have mistakenly concluded that *oversight* is neglected.

It has been suggested to us that scholars who have remarked congressional neglect of oversight were using the word more narrowly than we are—that they were *defining* “oversight” to mean police-patrol oversight, contrary to our Technological Assumption.

To this we have three replies: First, established usage equates oversight with the task of detecting and remedying violations of legislative goals by the executive branch.² No technique for accomplishing this task can be ruled out by definition. Second, the definitional equation of oversight with police-patrol oversight reflects the odd view that it is less important for Congress to make a serious attempt to detect and remedy violations of legislative goals than to employ a specific technique for doing so. Third, it would be odd to have a name for one way of detecting and remedying executive-branch violations of legislative goals but none for the general task of detecting and remedying such violations.

It has also been suggested to us that fire-alarm activities were never conceived or intended to be a form of oversight, whatever their effects.

²A 1977 report by the U.S. Senate Committee on Government Operations stated that “Oversight involves a wide range of congressional efforts to review and control policy implementation . . .” (pp. 4-5). According to Dodd and Schott (1979), “Oversight . . . involves attempts by Congress to review and control policy implementation” (p. 156). Ogul (1976) defines oversight as the process by which Congress determines, among other things, whether agencies are complying with congressional intent. See also Bibby, 1966; Harris, 1964; Lees, 1977; Lowi, 1969; Ripley, 1978; Woll, 1977.

We agree that congressmen rarely if ever refer to fire-alarm activities as "oversight," a term officially applied to subcommittees engaged in direct surveillance—in police-patrol oversight. Still, there is no evident reason for congressmen to engage in most fire-alarm activities unless they aim thereby to detect and remedy certain administrative violations of legislative goals.

Those who equate oversight with police-patrol oversight might argue that redressing grievances against the executive branch is not the same as enforcing compliance with congressional goals: the goals congressmen pursue in answering alarms related to particular laws need not be the goals they had in mind when they enacted those laws.

We see no reason to believe, however, that acts of legislation reflect well-defined or unalterable legislative goals—especially in view of the classical voting paradox and similar anomalies (Arrow, 1963; Plott, 1967; Schwartz, 1970, 1981, 1982a). Rather, legislative goals are refined, elaborated, and even changed over time in response to new problems—including complaints against executive agencies—and to changes in preferences and political alignments. In answering fire-alarms, congressmen not only enforce compliance with legislative goals; they help decide what those goals are.

Possibly those who bemoan congressional neglect of oversight would agree that fire-alarm oversight is extensively practiced but argue that it is not *effective*.

We have argued already that fire-alarm oversight is likely to be somewhat effective. The evidence presented two sections hence supports this conclusion.

Even granting that fire-alarm oversight is extensively practiced and *somewhat* effective, hence that Congress does not *neglect* its oversight responsibility, one might still wonder which form of oversight is the *more* effective. To this question we now turn.

The Greater Effectiveness of Fire-Alarm Oversight

We will argue that fire-alarm oversight is likely to be more effective, on balance, than police-patrol oversight. But this requires two qualifications: First, we do not contend that the most effective oversight policy is likely to contain no police-patrol features, only that fire-alarm techniques are likely to predominate. Second, we do not contend that a predominantly fire-alarm policy is more likely than a predominantly police-patrol policy to serve the public interest, only that it is likely to secure greater compliance with legislative goals; whether such compliance serves the public interest depends on what those goals are.

A predominantly fire-alarm oversight policy is likely to be more effective—to secure greater compliance with legislative goals—than a predominantly police-patrol policy for two main reasons:

First, legislative goals often are stated in such a vague way that it is hard to decide whether any violation has occurred unless some citizen or group registers a complaint. Such a complaint gives Congress the opportunity to spell out its goals more clearly—just as concrete cases and controversies give courts the opportunity to elucidate legal principles that would be hard to make precise in the abstract.

Second, whereas a fire-alarm policy would almost certainly pick up any violation of legislative goals that seriously harmed an organized group, a police-patrol policy would doubtless miss many such violations, since only a sample of executive-branch actions would be examined.

One who agrees with this point might still argue, on behalf of the greater efficacy of police-patrol oversight, that the citizens harmed by violations of legislative goals are not always represented by organized groups and, hence, cannot always sound a loud enough alarm to secure a redress of grievances.

Our reply is fourfold: First, nowadays even “disadvantaged” groups often have public spokesmen. Second, as we show in the following section, sometimes Congress passes legislation, as part of its fire-alarm policy, that helps comparatively disorganized groups to act collectively. Third, congressmen’s extensive constituent-service activities provide even individual citizens with an effective voice against administrative agencies: case work is part (but only part) of the fire-alarm system. Finally, if the point is merely that fire-alarm oversight can be biased in various ways, then the same is true of police-patrol oversight; and although a good enough police-patrol policy would avoid bias, so would a good enough fire-alarm policy.

To be sure, fire-alarm oversight tends to be *particularistic* in the sense of Mayhew (1974): it arguably emphasizes the interests of individuals and interest groups more than those of the public at large. This is an important difference—the essential difference, we think, between the respective products of police-patrol and fire-alarm oversight. But whether it is a shortcoming of fire-alarm oversight depends on one’s ideological point of view: even if fire-alarm oversight deemphasizes some public-interest concerns, it gives special emphasis to a concern for the interests and rights of individual citizens and small groups—a concern well founded in American political values.

Although our model refers only to Congress, we hazard to hypothesize that as most organizations grow and mature, their top policy makers adopt methods of control that are comparatively decentralized and incentive based. Such methods, we believe, will work more efficiently (relative to accepted policy goals) than direct, centralized surveillance. This is sufficiently plausible that we wonder why students of Congress have generally assumed that congressional oversight must be of the direct, centralized police-patrol variety. Part of the reason, perhaps, is that

Congress itself applies the label "oversight" to subcommittees charged with police-patrol responsibilities.

As we stated earlier, Consequences 1-3 do not depend on our Motivational Assumption, which depicts congressmen as pure politicians rather than statesmen. This is because statesmen, wishing to secure compliance with their legislative goals, would presumably adopt the most effective oversight policy, and that is likely to be one in which fire-alarm techniques predominate.

Evidence

Evidence for Consequence 3—and therewith our model—is plentiful and well known. Scholars who bemoan congressional neglect of oversight have not ignored this evidence. Rather, they have missed its significance: lacking the concept of fire-alarm oversight, they have failed to see the details of our fire-alarm system as instances of oversight activity. Here is a brief summary of the available evidence:

1. Under a fire-alarm system, complaints against administrative agencies are often brought to the attention of congressional subcommittees by lobbyists for organized groups, and to the attention of administrative agencies by congressional subcommittees. The functioning of this "subgovernmental triangle" has been well documented (Dodd and Oppenheimer, 1977; Fenno, 1966, 1973a,b; Goodwin, 1970; Ornstein, 1975; Ripley, 1969; Huitt, 1973; Matthews, 1960; Ripley and Franklin, 1976).

2. Congress has passed legislation to help comparatively disorganized groups to press their grievances against the federal government. McConnell (1966) shows how the Agriculture, Labor, and Commerce Departments act as lobbyists for farm, labor, and small-business interests. Congress has also created new programs, such as the Legal-Services Corporation, to organize and press the claims of comparatively voiceless citizens.

3. Constituent-service activities are not limited to unsnarling procedural knots. As part of the fire-alarm system, district staff and casework help individuals and groups—some of them otherwise powerless—to raise and redress grievances against decisions by administrative agencies. This casework component of legislative policy making has been examined only recently, with a primary focus on the electoral connection (Cain, Ferejohn, and Fiorina, 1979a,b; Fenno, 1978; Fiorina, 1977a; Mayhew, 1974; Parker and Davidson, 1979) and with a secondary focus on policy consequences (Fiorina, 1977a, 1982b; Fiorina and Noll, 1978, 1979a,b).

4. Often the fire-alarm system allows for the redress of grievances by administrative agencies and courts; Congress itself need not always get involved. To facilitate such redress, Congress has passed several laws, notably the Administrative Procedures Act of 1946 and the Environmental Procedures Act of 1969, that have substantially increased the number of groups with legal standing before administrative agencies and district

courts regarding bureaucratic controversies (Lowi, 1969).³ Congress has also, as in sections 4–7 of the Toxic Substances Control Act of 1976, increased the courts' powers to issue injunctions in response to alarms and has required administrative agencies to hold hearings, publish information, and invite public comment on agency decision making (McCubbins, 1982a).

5. There are numerous cases in which violations of legislative goals were brought to the attention of Congress, which responded with vigorous remedial measures. For example, Congress dismantled the Area Redevelopment Administration (ARA) in 1963, even though it had just been authorized in 1961. The ARA was encouraging industries to relocate in redevelopment areas despite clear provisions in the law to the contrary (Ripley, 1972). Congress also can redefine or reaffirm its goals by redefining or explicating the jurisdictional authority of an administrative agency. This happened with the Federal Trade Commission when it first sought to regulate cigarette advertising, children's television, and funeral homes. Sometimes such congressional intervention is legislatively mandated. Before taking action on a pending case, for example, the National Labor Relations Board must consult with the appropriate congressional committees.

6. The general impression that Congress neglects oversight, we have argued, really is a perception that Congress neglects police-patrol oversight. That impression and the evidence adduced to support it constitute further evidence for Consequences 1 and 3: they show that congressmen tend to prefer an oversight policy in which fire-alarm techniques predominate.

Further Implications: Has Bureaucratic Discretion Increased?

Hand in glove with our stylized fact (neglect of oversight) goes another: Congress has increasingly relinquished its legislative authority to the executive branch, allowing the bureaucracy to make law (Dodd and Schott, 1979; Hess, 1976; Lowi, 1969; Woll, 1977).⁴

Although Congress may, to some extent, have allowed the bureaucracy to make law, it may also have devised a reasonably effective and noncostly way to articulate and promulgate its own legislative goals—a way that depends on the fire-alarm oversight system. It is convenient for

³ Ferejohn (1974) provides a good example of how the decision-making procedures of the Army Corps of Engineers were expanded to include wilderness, wildlife, and environmental group interests by the passage of the 1969 Environmental Procedures Act.

⁴ On related points see Fiorina (1977b), Weingast and Moran (1981), McCubbins (1982a,b), and McCubbins and Page (1982). Weingast has argued that Congress employs a number of its constitutionally defined powers in a decentralized and often unobserved way in order to exercise control over the actions of administrative agencies (Calvert, Moran, and Weingast, 1982; Weingast and Moran, 1981).

Congress to adopt broad legislative mandates and give substantial rule-making authority to the bureaucracy. The problem with doing so, of course, is that the bureaucracy might not pursue Congress's goals. But citizens and interest groups can be counted on to sound an alarm in most cases in which the bureaucracy has arguably violated Congress's goals. Then Congress can intervene to rectify the violation. Congress has not necessarily relinquished legislative responsibility to anyone else. It has just found a more efficient way to legislate.

When legislators try to write laws with sufficient detail and precision to preclude administrative discretion, they quickly run up against their own cognitive limits: beyond a certain point, human beings just cannot anticipate all the contingencies that might arise. The attempt to legislate for all contingencies can entail unintended (and undesired) consequences. In his classic study of Anglo-American judicial reasoning, Levi (1948) makes this point about judges (lawmakers of a sort), who lay down imprecise rules, which they subsequently and gradually elaborate in response to concrete legal disputes. Oakeshott (1973) makes a similar point about political activity of all sorts: it cannot be based on precise, detailed blueprints, and so policy formulations can at best be rough summaries of experience, requiring elaboration and judicious application case by case.

The ostensible shifting of legislative responsibility to the executive branch may simply be the responsible adoption of efficient legislative techniques and the responsible acceptance of human cognitive limits—both facilitated by the fire-alarm system.

Further Implications: The Choice of Regulatory Policy

When it decides regulatory issues, Congress tends to choose one of two types of regulatory instrument: command-and-control instruments and incentive-based instruments. Congress faces a similar choice when it decides, not how to regulate society, but how to regulate the regulators—when it decides, in other words, on oversight policy. For police-patrol oversight is similar to command-and-control regulatory instruments, while fire-alarm oversight is similar to incentive-based instruments.

Offhand one might suppose that just as congressmen tend to prefer fire-alarm to police-patrol oversight policies, so they would tend to prefer incentive-based to command-and-control regulatory policies. Our observations, of course, do not support this supposition (Breyer, 1982; Fiorina, 1982a; Joskow and Noll, 1978; McCubbins, 1982a; McCubbins and Page, 1982; Schultze, 1977).

Paradoxically, Congress's very preference for fire-alarm oversight entails a preference for command-and-control regulatory policy. For command-and-control agencies are more susceptible of case-by-case congressional intervention in response to complaints, hence more suscep-

tible of fire-alarm control, than are courts, taxing authorities, and private individuals and firms—the principal participants in incentive-based regulatory policy.

Conclusion

The widespread perception that Congress has neglected its oversight responsibility is a widespread mistake. Congressional scholars have focused their attention on police-patrol oversight. What has appeared to many of them to be a neglect of oversight is really a preference—an eminently rational one—for fire-alarm oversight. That a decentralized, incentive-based control mechanism has been found more effective, from its users' point view, than direct, centralized surveillance should come as no surprise.

Besides criticizing the received wisdom regarding congressional oversight, we hope to have highlighted a neglected way of looking at congressional behavior. Sometimes Congress appears to do little, leaving important policy decisions to the executive or judicial branch. But appearances can deceive. A perfectly reasonable way for Congress to pursue its objectives is by ensuring that fire alarms will be sounded, enabling courts, administrative agencies, and ultimately Congress itself to step in, whenever executive compliance with congressional objectives is called in question. In examining congressional policies and their impact, do not just ask how clear, detailed, or far-sighted congressional legislation is. Ask how likely it is that fire alarms will signal putative violations of legislative goals and how Congress is likely to respond to such alarms.

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