



UNITED STATES SENATE

A History of Notable Senate Investigations

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Origins

The authority of Congress to investigate is an implied constitutional power. James Madison anticipated the significance of congressional inquiry in Federalist 51 when he urged: "In framing a government which is to be administered by men over men. . .you must first enable the government to control the governed; and in the next place oblige it to control itself." Congress has exercised its investigative responsibility since the earliest days of the republic. Today congressional oversight enables House and Senate members to serve as the eyes and ears of the American public.

Congressional investigations date back to 1792 when the House passed a resolution to examine the disastrous St. Clair expedition. Since then Congress has conducted hundreds of investigations. Noteworthy inquiries have required a combination of persistence, thoroughness, expert staff, sharp questioning, good publicity, and some luck. Successful investigators diligently conduct background research and have been shrewd in evaluating evidence and in questioning witnesses. The very best have managed to achieve a level of bipartisanship to maintain credibility. Particularly during the second half of the 20th century, senators and their committee staff have honed their public relations skills to attract press coverage and hold public attention. Historically significant Senate investigations have uncovered wrongdoing, have punished transgressors, and have produced legislation aimed at prohibiting similar abuse in the future.

Congressional investigations have not been confined to oversight of the executive or judicial branches though that has often been the focus of past inquiries. Congress may investigate anything related to the development of public policy. Since its earliest investigations, Congress has availed itself of the power of inquiry in order to inform the public and to write good legislation. Over the past two centuries the Senate has probed issues such as interstate commerce, Ku Klux Klan activities, the sinking of the R.M.S. *Titanic*, Wall Street banking practices, organized crime, antiunion activity, the sale of cotton, and the Vietnam War. Perhaps the Senate's best-known investigatory committee, the Select Committee on Presidential

Campaign Activities (commonly known as the Watergate Committee), investigated alleged malfeasance in the executive branch and was instrumental in bringing about the resignation of President Richard Nixon.

Process

Each house of Congress governs its committee investigations through authorizing or enabling resolutions, which define the scope of the inquiry and identify the anticipated result. Many investigations are performed by select or special committees, established to probe a particular issue, report on it, and make policy recommendations based on that report. Committee members may inquire into those issues that are relevant to the subject under investigation. In the case of temporary committees, members generally set their own procedural rules based on the majority vote of committee members.

In 1827, the House empowered the Committee on Manufactures "to send for persons and papers" relating to tariff legislation, and since then both houses have considered it their right to summon anyone, whether inside or outside the government, to testify. In 1857, Congress provided that reluctant witnesses could be held in contempt and tried by federal courts. The Senate passed a resolution to conduct its first legislative inquiry on December 14, 1859, creating the Select Committee to Inquire into the Facts of the Recent Invasion and Seizure of the United States Armory at Harper's Ferry. Since then, the Senate has increasingly recognized the importance of investigations, and has expanded its powers to conduct inquiries including subpoena power for all standing committees granted by the Legislative Reorganization Act of 1946.

Challenges

Two processes have threatened Congress' investigatory power: the executive branch's refusal to cooperate with inquiries and the perception that committees have overstepped their constitutional authority. In 1881 the Supreme Court decided, in *Kilbourn v. Thompson*, that a House investigation into the bankruptcy of Jay Cooke and Company had exceeded its authority because no clear legislation could result from the inquiry. Generally, however, the courts have broadly construed congressional powers to conduct investigations. During the Senate investigation of the Teapot Dome scandal in the 1920s the Supreme Court held in *McGrain v. Daugherty* (1927), that congressional committees could issue subpoenas, could compel witnesses to testify, and could hold them in contempt if they failed to comply. In a second decision, *Sinclair v. United States* (1929), the Court ruled that a witness who lies before a congressional committee can be convicted of perjury.

Investigations, in the words of Senator Sam Ervin, chairman of the Watergate Committee, "can be the catalyst that spurs Congress and the public to support vital reforms in our nation's laws." He cautioned, however, that probes may also "afford a platform for demagogues and the

rankest partisans." Despite these challenges, investigations remain a critical tool for legislators to formulate laws and inform public opinion.
