

# Investigations & Oversight

*"All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives."*  
— U.S. Constitution, Article I, section 1



Image courtesy of the Library of Congress

President Gerald R. Ford testified before a House Judiciary Committee subcommittee to explain his pardon of President Richard M. Nixon on October 17, 1974. Ford became the first sitting president since Abraham Lincoln to address a congressional investigating committee on Capitol Hill.

The Constitution says nothing about congressional investigations and oversight, but the authority to conduct investigations is implied since Congress possesses "all legislative powers." The Supreme Court determined that the framers intended for Congress to seek out information when crafting or reviewing legislation. George Mason of Virginia said at the Federal Convention that Members of Congress "are not only Legislators but they possess inquisitorial powers. They must meet frequently to inspect the Conduct of the public offices."

## Origins

The constitutional framers assumed that Congress would conduct investigations as the British House of Commons conducted them. [James Wilson](#) ([/People/Detail/23919?ret=True](#)) of Pennsylvania, a future Supreme Court Justice and Convention delegate, wrote in a 1774 essay that members of the Commons were considered "grand inquisitors of the realm. The proudest ministers of the proudest monarchs have trembled at their censures; and have appeared at the bar of the house, to give an account of their conduct, and ask pardon for their faults." When the U.S. House convened in 1789, it established an early set of select committees, such as Rules and Ways and Means, to structure the legislative process including investigations.

## Early Investigations

The House used its investigatory privileges in the [First Congress](#) ([/Congressional-Overview/Profiles/1st/](#)) (1789–1791). [Robert Morris](#) ([/People/Detail/18562?ret=True](#)) of Pennsylvania, the superintendent of finances during the Continental Congress and a financier of the American Revolution, asked Congress in 1790 to investigate his handling of the country's finances in order to clear his name of potential impropriety. The House referred Morris's request to a select committee, setting a precedent for future investigations, while the Senate had President [George Washington](#) ([/People/Detail/23425?ret=True](#)) appoint special commissioners and report back to that body. Representative [James Madison](#) ([/People/Detail/17381?ret=True](#)) of Virginia said that the "House should possess itself of the fullest information in order to doing justice to the country and to public officers."

Two years later, the House authorized a special committee to investigate the military defeat of General Arthur St. Clair. This was the first time the House investigated an official under the President's direct supervision. Several Representatives debated whether the House had authority to conduct such an investigation at all. Initially, Representative [William Giles](#) ([/People/Detail/13797?ret=True](#)) of Virginia moved a resolution to request that President Washington launch an investigation. But the House amended the resolution to create a select committee, authorized "to call for such persons, papers, and records, as may be necessary to assist their inquiries." Washington consulted his Cabinet to discuss compliance with the House's investigation. They agreed upon rules of disclosure that formed the early basis of what is now known as "executive privilege," or The President's prerogative to use private documents and unvarnished advice to formulate policy decisions.

## Subpoena Power and Contempt

The House has compelled the attendance of witnesses since 1795, when it investigated an attempt to bribe Members. Indeed, early cases of congressional subpoena and contempt powers focused on the abuse or discredit of the House itself. Robert Randall, a real estate speculator, had tried to purchase what is now Michigan from the federal government and share the proceeds with Members of Congress who approved the sale. As a result, Randall was the first individual held in contempt of Congress. The House [Sergeant-at-Arms](#) ([/People/Office/Sergeants-at-Arms/](#)) was authorized to arrest him and bring him before the House, where he was reprimanded and placed in a local jail for a week.

Subpoena power for routine legislative matters evolved after an 1827 debate authorizing the Committee on Manufactures to "send for persons and papers." The committee, seeking more information on reforming the tariff of 1824, wanted to conduct its own investigation given that voluntary testimony and memorials to the committee had been "in many instances opposed to each other, and contradictory as regards facts." One Representative denounced the action as an "inquisition" and such power generally as "odious, and oppressive, in the highest degree." Representative [Edward Livingston](#) ([/People/Detail/17050?ret=True](#)) of Louisiana said it was better to have an independent investigation than rely on voluntary testimony by "those interested to deceive." Livingston said, "all our laws...would be better, more stable, more wise" if the House conducted its own investigations.

The House reformed and routinized its subpoena and contempt powers during the 19th century. Initially, it had authorized the Sergeant-at-Arms to arrest those disregarding the orders of the House and bring them before its Membership. After an 1857 case involving a reporter for the *New York Times* who

was held in contempt for not divulging his sources for a report concerning potential bribery of House Members, Congress passed the forbearer to the current law on contempt (2 USC §194). In that law, the failure of a witness to answer “any question pertinent” to a congressional investigation would prompt an investigation by the Department of Justice, as well as potential fines and jail time.

## Current Practice

Hearings are most commonly held for three reasons: to consider pending legislation; to investigate issues that may require legislation in the future; and, to investigate and oversee federal programs. They reflect the most important issues of the day and what occupies congressional attention. This means that Congress holds hearings on a variety of issues, from steroid abuse in professional sports to the use of weather satellites. Hearings have also been used to further the rights of minority groups. Congressional investigations not only help legislators make better policy decisions, but they are central to the system of checks and balances. Investigatory hearings can uncover presidential abuses of power and corruption, such as the Teapot Dome scandal in the 1920s or Watergate in the 1970s. But hearings have also been used for less noble purposes, such as the blacklisting of private citizens during the “un-American activities” hearings in the 1950s. While the power to investigate is broad, the Supreme Court has since ruled that Congress must confine itself to “legislative purposes” and avoid the strictly private affairs of individual citizens.

## For Further Reading

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