

# Congressional Investigations: A Bibliography\*

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*When Congress is in need of information, it has several methods it can use, but the most visible, and most dramatic, is the congressional investigation. From the Teapot Dome scandal to the McCarthy investigations of the 1950s, right up to Watergate and Iran-Contra, the congressional investigation holds the public's attention. Mr. Mantel provides a selected, annotated bibliography on the topic of congressional investigations. He also includes a short history of these types of investigations and a discussion of the major issues raised by these investigations.*

We are called The Grand Inquest of the Nation; and, as such, it is our duty to inquire into every step of public management, both abroad and at home, in order to see that nothing has been done amiss.

—William Pitt the Elder<sup>1</sup>

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1. [William Pitt the Elder], *Speech of Lord Chatham on a Motion for Inquiring into the Conduct of Sir Robert Walpole*, in CHAUNCEY A. GOODRICH, *SELECT BRITISH ELOQUENCE* 82, 84 (1963).

## Introduction

¶1 My interest in congressional investigations began with the alignment of two events. In developing another project during the run-up to the 2006 elections, I read a biography of Senator Joseph McCarthy.<sup>2</sup> At the same time, the media was filled with stories about how the Democrats were poised to take over one or both houses of Congress and what they would do once they got there. The Republicans, in an attempt to rally their base before the elections, issued warnings about a Democrat-controlled Congress and their “leftist agenda of more spending, higher taxes, and maybe even an attempt at impeaching President Bush.”<sup>3</sup> Former Speaker of the House Newt Gingrich phrased it this way: “You can expect two years of all-out investigations and attacks and anything they can bring to bear.”<sup>4</sup> The president himself joined the fray, saying that “it would be a ‘ghastly thing’ for the United States if ‘wild Democrats’ were put in charge of congressional committees.”<sup>5</sup> During the campaign the Democrats for their part were not shy about advertising their intent to reinstitute congressional oversight. Their laundry list of potential targets of oversight investigations included privacy, identity theft, outsourcing, currency manipulation, air quality, EPA enforcement, FDA enforcement, Medicare Part D, the FCC and media ownership, the Department of Homeland Security, as well as the aftermath of Hurricane Katrina.<sup>6</sup> In the past this type of oversight has been a useful check on past executive branch over-reaching as well as potential illegal activity, and a way of investigating potential legislation. As a result of these new stories about the 2006 election, my reading about Senator McCarthy’s hearings, and my general interest in Congress,<sup>7</sup> I was inspired to compile this bibliography.

¶2 The congressional investigation has a long and distinguished history, dating from the very beginning of the nation.<sup>8</sup> Since the time of Watergate, we most often think of the congressional investigation as the device through which Congress exercises one of its most important duties—oversight of the executive branch. However, the congressional investigation is more than just a tool for looking over

2. DAVID OSHINSKY, *A CONSPIRACY SO IMMENSE: THE WORLD OF JOE MCCARTHY* (1983).

3. Danielle Knight, *The Dems' Agenda*, U.S. NEWS & WORLD REPORT, Oct. 30, 2006, at 32.

4. Michael Crowley, *Subpoena Envy*, THE NEW REPUBLIC, Nov. 6, 2006, at 9.

5. *Id.*

6. *Id.* This list comes from only one member of Congress, Rep. John Dingell (D-MI). One can only imagine how long the list would be if you polled every member of Congress, and that’s not including Rep. Henry Waxman (D-CA) who may have a list several pages long. *See id.*

7. *See* Matthew Mantel, *Researching House and Senate Rules and Procedures*, Legal Reference Services Q., 2005, no 3/4, at 67 (2005); Matthew Mantel, *Private Bills and Private Laws*, 99 LAW LIBR. J. 87, 2007 LAW LIBR. J. 5.

8. The first congressional investigation was convened on March 27, 1792, to investigate a failed military expedition by General Arthur St. Clair against American Indians. *See infra* ¶ 6. This investigation was also the first time the concept of executive privilege was discussed, although ultimately not invoked, in response to requests for documents from the executive branch. MARK J. ROZELL, *EXECUTIVE PRIVILEGE: PRESIDENTIAL POWER, SECRECY, AND ACCOUNTABILITY* 29–30 (2d ed. 2002).

the shoulder of the president; investigations also lay the groundwork for legislation and reform.<sup>9</sup> For example, congressional investigations of Wall Street banking practices led to enactment of the Federal Reserve Act of 1913 and the Clayton Antitrust Act, as well as the creation of the Federal Trade Commission in 1914.<sup>10</sup> While the process has sometimes been abused by individual representatives for personal glory<sup>11</sup> or partisan gain,<sup>12</sup> congressional investigations have on the whole been positive and only rarely hijacked by individuals.

¶3 As stated earlier, news reports alerted me to the topic of congressional investigations. I then began to think about the congressional investigation in a larger context, as the process is portrayed in books and film, both fiction and nonfiction. It occurred to me that the congressional investigation is a dramatic proceeding. Not only do congressional investigations often garner very respectable television ratings, they also have been known to play a prominent part in popular culture.<sup>13</sup> Like a courtroom, a congressional hearing room is an adversarial arena, ideal for creating dra-

9. Congress usually conducts an investigation for one of four purposes: to enact legislation, to provide oversight of existing programs, to keep the public informed, or to “protect its integrity, dignity, reputation, and privileges.” The 1992–93 Staff of the Legislative Reference Bureau, *An Overview of Congressional Investigation of the Executive: Procedures, Devices, and Limitations of Congressional Investigative Power*, 1 SYRACUSE J. LEGIS. & POL’Y. 1, 1 (1995) [hereinafter Legislative Reference Bureau].
10. The “Money Trust” investigation (also known as the Pujo Committee hearings) investigated Wall Street banking practices that led to that legislation. CONGRESSIONAL QUARTERLY’S GUIDE TO CONGRESS, 267 (5th ed. 2000). The famous Pecora hearings from 1932 to 1934, which investigated the causes of the Great Depression, led to a significant amount of legislation, including the Securities Act of 1933 and the Securities Exchange Act of 1934. *Id.* at 268–69.
11. Sen. Joseph McCarthy and Sen. Estes Kefauver are notable examples of obscure senators who have catapulted themselves into national figures based upon their presiding over congressional investigations. *See id.* at 270–71.
12. See, e.g., the numerous congressional investigations during the tenure of President Clinton, in which more than 1,000 subpoenas were issued. Robert Kuttner, *A Slight Oversight*, THE AMERICAN PROSPECT, Oct. 2006, at 38.
13. For instance, the television audience for the Army-McCarthy hearings reached thirty million viewers (even in 1954, when many people did not have televisions). ENCYCLOPEDIA OF TELEVISION NEWS 11 (Michael D. Murray ed., 1999). The Kefauver Crime Hearings were so popular in 1951 that “[a]udience research firms reported that daytime viewing was 20 times higher than normal during the hearings, that twice as many viewers watched the hearings as watched the 1950 World Series, that 69.7% of New York’s television sets were turned on . . . .” Gregory C. Lisby, *Early Television on Public Watch: Kefauver and his Crime Investigation*, 62 JOURNALISM Q. 236, 239 (1985). During the Watergate hearings PBS aired tape-delayed coverage at night. These delayed telecasts increased cash contributions to PBS and improved ratings. “Watergate was probably the most important thing that has happened to noncommercial public affairs reporting since it was founded.” RONALD GARAY, CONGRESSIONAL TELEVISION: A LEGISLATIVE HISTORY 71 (1984) (quoting Ben Bagdikian, *Newspapers Learning (Too Slowly) to Adapt to TV*, COLUM. JOURNALISM REV., Nov./Dec. 1973, at 46.). The Iran-Contra hearings turned both Oliver North and his secretary Fawn Hall into celebrities. North ran for the U.S. Senate from Virginia (he lost) and has a radio talk-show. *See The 1994 Elections: The Overview*, N.Y. TIMES, Nov. 9, 1994, at A1; Howard Kurtz, *Oliver North, Right on the Dial: New Talk Show Preaches to the Choir*, WASH. POST, Mar. 14, 1995, at E1. Fawn Hall “signed with Hollywood superagent Norman Brokaw of the William Morris Agency, and landed a television contract.” WILLIAM S. COHEN & GEORGE J. MITCHELL, MEN OF ZEAL: A CANDID INSIDE STORY OF THE IRAN-CONTRA HEARINGS 138 (1988).

matic tension. Who can forget the scene in *The Godfather II*<sup>14</sup> when Frankie “Five Angels” Pentangeli refuses to turn on Michael Corleone, and then Michael requests the investigating committee to apologize? Fictional depictions of an investigation, however, have nothing on the event in real life. Frank Pentangeli is no more dramatic than Lt. Col. “Ollie” North’s self-pitying testimony and justifications for deceit,<sup>15</sup> Alexander Butterfield’s off-hand remark about recording devices in the White House,<sup>16</sup> Joe Valachi revealing the existence of La Cosa Nostra,<sup>17</sup> or Frank Costello’s hand-wringing filling 1950s-era television sets.<sup>18</sup> Joseph McCarthy’s congressional investigations have spawned an enormous literature all their own.<sup>19</sup> While congressional committees do make great theater, when an investigation is done right it can also lead to great policy and great law. Because these investigations are legal proceedings of a sort, they deserve a bibliography of the law review articles, reports, and books that have analyzed, critiqued, documented, and explained them.

### A Short History

¶4 The text of the Constitution does not explicitly grant Congress the power to conduct investigations, but the power has become ingrained in the fabric of

14. THE GODFATHER: PART II (Paramount Pictures 1974).
15. Cohen and Mitchell had this to say about North’s testimony:  
 No sentiment went untapped by North, no role untried. North begged the Committee not to let his transgressions jeopardize America’s support for the Contras: “Hang whatever you want around the neck of Ollie North. . . . But for the love of God and the love of this nation, don’t hang around Ollie North’s neck the cut-off of funds to the Nicaraguan resistance again.”  
 North enraged a number of the Committee members by implicitly branding those who disagreed with him as lacking in a love for either God or country.  
 COHEN & MITCHELL, *supra* note 13, at 164
16. See SAMUEL DASH, CHIEF COUNSEL: INSIDE THE ERVIN COMMITTEE—THE UNTOLD STORY OF WATERGATE 184 (1976). Dash says of Butterfield’s testimony concerning the existence of a White House taping system, “It drew gasps of shocked surprise at the press tables and struck the worldwide television audience like a bombshell.” *Id.*
17. PETER MAAS, THE VALACHI PAPERS 9 (1968).
18. In exchange for testifying before the Kefauver Commission, gangster Frank Costello refused to have his face televised. The television network agreed and focused their cameras on Costello’s hands. Television viewers were treated to “an eerie contrast between a calm voice seeking exoneration and the fidgeting hands of a clearly nervous man.” Lisby, *supra* note 13, at 238 (quoting HARRY CASTLEMAN & WALTER J. PADRAZIK, WATCHING TV 62 (1982)).
19. The McCarthy hearings have provided a rich vein of material eagerly mined by books, movies, and plays. Notable films include: THE FRONT (Columbia Pictures 1976), ON THE WATERFRONT (Columbia Pictures 1954), THE CRUCIBLE (Twentieth Century-Fox 1996), and GUILTY BY SUSPICION (Warner Bros. 1991). The list of books on Senator McCarthy, his hearings, and “McCarthyism” may be longer than the list of communists who allegedly worked at the State Department. Interested readers can choose from books on the left (RICHARD ROVERE, SENATOR MCCARTHY (1959)) to objective books (DAVID M. OSHINSKY, A CONSPIRACY SO IMMENSE: THE WORLD OF JOSEPH MCCARTHY (1983); THOMAS C. REEVES THE LIFE AND TIMES OF JOE MCCARTHY: A BIOGRAPHY (1982)), to books on the right, which sought to defend McCarthy (WILLIAM F. BUCKLEY & L. BRENT BOZELL, MCCARTHY AND HIS ENEMIES (1954)), to contemporary books seeking to rehabilitate him (ANN COULTER, TREASON: LIBERAL TREACHERY FROM THE COLD WAR TO THE WAR ON TERRORISM (2003); M. STANTON EVANS, BLACKLISTED BY HISTORY: THE UNTOLD STORY OF SENATOR JOE MCCARTHY AND HIS FIGHT AGAINST AMERICA’S ENEMIES (2007)).

congressional governance. During the early years of the republic, congressional power to conduct investigations was believed to be based on precedents that had come down from the British Parliament<sup>20</sup> and implicit in associated powers in the Constitution granted to Congress.<sup>21</sup> These associated powers are found in three provisions of Article I of the Constitution. The first of these provisions—Article I, Section 1—states that “All legislative powers herein granted shall be vested in a Congress . . . .”<sup>22</sup> Without the power to investigate, including the power to gather relevant background data and other information, Congress would be unable to promulgate legislation effectively. The second of these associated powers is found in Article I, Section 2, Clause 5, which grants the House of Representatives the power to impeach,<sup>23</sup> and Article I, Section 3, Clause 6, which grants the Senate the power to try officials impeached by the House.<sup>24</sup> Implicit in this power to impeach and try officials is the authority to conduct an investigation of their conduct.<sup>25</sup> Finally, Article I, Section 8, Clause 18 of the Constitution grants Congress the power to make “all laws which shall be necessary and proper for carrying into execution the foregoing powers . . . .”<sup>26</sup> This is the famous “necessary and proper” clause, which allows Congress to “create the means and tools to carry out its legislative purpose . . . . [T]he power to investigate is inherent in the ability of Congress to insure the proper implementation of laws.”<sup>27</sup> History and congressional precedent have solidified this power.

¶5 The power to conduct investigations, as well as the parameters of how the investigation is conducted, also rest on a series of Supreme Court cases. In *Barenblatt v. United States*, the Court stated that “[t]he scope of [Congress’s] power of inquiry, in short, is as penetrating and far-reaching as the potential power to enact and appropriate under the Constitution.”<sup>28</sup> The scope of congressional power was discussed more fully in *Watkins v. United States*, where the Court described the power of Congress to conduct investigations as “inherent in the legislative process. That power is broad. It encompasses inquiries concerning the

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20. The first formal legislative investigation was held by the English Parliament in 1571. “[T]he legislative investigation device continued in use in England down to the time when the American colonies were established. The colonists therefore assumed, without question, their right to inquire into the conduct of their officials, as well as into other matters of general concern.” William C. Warren, *Congressional Investigations: Some Observations*, 21 FOOD, DRUG, COSM. L.J. 40, 41 (1966).
  21. The most notable associated power is the power to appropriate money. If you could appropriate money, surely you could investigate how that money was spent. See M. Nelson McGeary, *Congressional Investigations: Historical Development*, 18 U. CHI. L. REV. 425, 436 (1951).
  22. U.S. CONSTITUTION, art. I, § 1.
  23. “The House of Representatives . . . shall have the sole power of impeachment.” U.S. CONSTITUTION, art. I, § 2, cl. 5.
  24. “The Senate shall have the sole power to try all impeachments.” U.S. CONSTITUTION, art. I, § 3, cl. 6.
  25. Legislative Reference Bureau, *supra* note 9, at 2–3.
  26. U.S. CONSTITUTION, art. I, § 8, cl. 18.
  27. Legislative Reference Bureau, *supra* note 9, at 3.
  28. *Barenblatt v. United States*, 360 U.S. 109, 111 (1959).

administration of existing laws as well as proposed or possibly needed statutes.”<sup>29</sup> While seemingly vast, Congress’s investigative power is not without limits. As the Court in *Watkins* stated:

There is no general authority to expose the private affairs of individuals without justification in terms of the functions of the Congress. . . . Nor is the Congress a law enforcement or trial agency. These are functions of the executive and judicial departments of government. No inquiry is an end in itself; it must be related to, and in furtherance of, a legitimate task of the Congress.<sup>30</sup>

¶6 An examination of the history of congressional investigations is illustrative of how Congress uses its power. The first congressional investigation was that of General Arthur St. Clair as a result of a military defeat at the hand of Northern Ohio Indians.<sup>31</sup> Wars are an especially fertile ground for Congress to investigate. Every major military engagement from the nation’s birth to the Vietnam War has led to a congressional investigation, with the exception of the Spanish-American War of 1898.<sup>32</sup>

¶7 Reviewing the “big” investigations undertaken by Congress reveals several discernable trends. One such trend is that certain eras are associated with certain types of investigations. During the “Gilded Age,” roughly from the 1870s to World War I, America’s economy grew explosively, and economic matters were the subject of numerous investigations, such as investigations into the Credit Mobilier scandal, union unrest, and the famous “money trust.”<sup>33</sup> As a result of the Great Depression, the New Deal, and World War II, the federal government grew larger and handled issues of greater complexity. From the creation of the New Deal in the early 1930s to the end of World War II, Congress increasingly engaged in investigations of the federal government itself. Most notable was the Truman Committee, which investigated “the operation of the program for the procurement and construction of supplies, materials, vessels, plants, camps, and other articles and facilities in connection with the national defense.”<sup>34</sup> The post-WWII years were dominated by investigations of threats to internal security. These perceived threats were the subject of two famous investigations: the Special Committee to Investigate Organized Crime in Interstate Commerce and the McCarthy investigations, which Senator Joseph McCarthy conducted while chairman of the Permanent Investigations

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29. *Watkins v. United States*, 354 U.S. 178, 187 (1957).

30. *Id.*

31. Kalah Auchincloss, Note, *Congressional Investigations and the Role of Privilege*, 43 AM. CRIM. L. REV. 165, 167 (2006).

32. George B. Galloway, *The Investigative Function of Congress*, 21 AM. POL. SCI. REV. 47, 48 (1927). Galloway goes on to say that President McKinley avoided an investigation into the Spanish-American war by appointing the Dodge Commission. *Id.* It appears that presidential blue-ribbon commissions whose job it is not to find the truth also have a long history.

33. CONGRESSIONAL QUARTERLY’S GUIDE TO CONGRESS, *supra* note 10, at 266–67.

34. The formal name of this committee was the Senate Special Committee to Investigate the National Defense Program, and it was regarded as the most successful congressional investigating committee. *Id.* at 269.

Subcommittee of the Senate Government Operations Committee.<sup>35</sup> Starting with Watergate and continuing to the present day, most high-profile investigations have focused on the perceived wrongs of government actors. These investigations include the Watergate investigation, the Church Committee, the Iran-Contra investigation, and numerous investigations of the Clinton administration.<sup>36</sup>

¶8 A review of the history of congressional investigations also reveals several trends regarding the legal issues raised by such investigations. As one can see when examining the dates of many of the law review articles in the bibliography, as the nature of the investigations changed, so too did the relevant law. In the early years of congressional investigations, legal issues pertaining to the establishment of the investigatory committee were at the forefront. During the 1950s, as congressional investigations shifted to individuals and their political activities, there was an explosion in law (and commentary) addressing the rights of individual witnesses. In more recent years, starting with the Watergate investigations and accelerating during Iran-Contra and the Clinton administration investigations, issues of executive privilege, contempt, and immunity have become more important.

¶9 The congressional investigation will always have a place in our form of government, as it serves as a useful check on executive power. A review of the history of congressional investigations shows that the strength of the process lies in the tension between the coordinate branches of government; its place can only be maintained when that tension is in place. When that tension is lost, when Congress abdicates its oversight function and allows itself to be led blindly by the executive branch of government, the country loses one branch of its government. This is by no means an argument for permanently divided government where one party controls the executive branch and the other the legislative branch. The history of congressional investigations shows, most notably in the form of the Truman Committee, that even when one party controls both branches, a congressional investigation can lead to positive criticism and reform:

In short, an analysis of the use of the investigating committee in American history clearly shows that in it Congress has an instrument, often blunt and clumsy to be sure, which it has consistently employed to supplement the power of the purse and the law-making power and to supplant in large measure the even more unwieldy power of impeachment.<sup>37</sup>

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35. The former investigation, known as the Kefauver Committee, first exposed organized crime in this country and made Sen. Estes Kefauver a nationally known figure. *Id.* at 270. McCarthy's investigations focused on ferreting out communists within the federal government. *Id.* at 271. The equally well-known investigations of the House Un-American Activities Committee sought to uncover communists in other places, including Hollywood. The work of the House Un-American Activities Committee made Richard M. Nixon nationally known. *Id.* at 272.

36. The Church Committee is shorthand for Sen. Frank Church's 1975-76 investigation of CIA misdeeds dating back to the 1950s. *Id.* at 275. Iran-Contra involved the trading of arms for hostages with Iran, and funneling the profits to the Contra rebels of Nicaragua. *Id.* at 275-77. The investigations of the Clinton administration conducted by a fiercely partisan Republican Congress included the Whitewater land deal, firings in the White House travel office, requests for access to FBI files, and 1996 Democratic campaign fund-raising. *Id.* at 277-80.

37. Galloway, *supra* note 32, at 50.

## Major Issues

¶10 I have divided the bibliography into sections that correspond to some of the issues that are repeatedly discussed in the congressional investigation literature. I have used the following categories: constitutional issues (usually involving the First and Fifth Amendments), immunity granted to witnesses, witnesses, the role of the courts/court decisions, contempt and enforcement, the executive, particular investigations and committees, limits of Congress's power, attorney-client issues, and a general catch-all category.

¶11 Constitutional issues in the form of refusals to testify based upon First Amendment freedom of speech or association rights or the Fifth Amendment protection against self-incrimination are the most common constitutional issues, although there is some limited jurisprudence concerning Fourth Amendment unreasonable search and seizure violations.<sup>38</sup> First Amendment complaints are subject to a balancing test between the individual's rights and the "public interests at stake in the particular circumstances shown."<sup>39</sup> Fifth Amendment issues have been murkier, but the Supreme Court has generally upheld a witness's right to invoke the Fifth Amendment right against self-incrimination as a reason to refuse to answer questions and as a defense to contempt.<sup>40</sup>

¶12 An issue that has become more important since the Watergate investigation, and was very prominent during the Iran-Contra investigation, is that of witness immunity. In order to encourage witnesses to testify, Congress often grants them immunity from prosecution in exchange for their testimony,<sup>41</sup> and Congress has taken great pains to craft immunity for witnesses by statute.<sup>42</sup> Grants of immunity are often controversial,<sup>43</sup> as was the case when Congress granted Oliver North partial immunity during the Iran-Contra hearings. As a result of this immunity, evidence given during the hearings could not be used against him during his criminal trial.<sup>44</sup>

38. "Dicta in opinions of the Supreme Court indicate that the Fourth Amendment's prohibition against unreasonable searches and seizures is applicable to congressional committees. It appears that there must be probable cause for the issuance of a congressional subpoena." FREDERICK M. KAISER ET AL., CONGRESSIONAL OVERSIGHT MANUAL 52 (Cong. Research Serv., CRS Report for Congress, Order Code RL30240, May 1, 2007), available at <http://www.fas.org/sgp/crs/misc/RL30240.pdf>.
39. *Barenblatt v. United States*, 360 U.S. 109, 126 (1959). "[U]nlike the Fifth Amendment privilege against self-incrimination, the First Amendment does not give a witness an absolute right to refuse to respond to congressional demands for information. KAISER ET AL., *supra* note 38, at 52.
40. See MORTON ROSENBERG & TODD B. TATELMAN, CONGRESS'S CONTEMPT POWER: LAW, HISTORY, PRACTICE, AND PROCEDURE 62-65 (Cong. Research Serv., CRS Report for Congress, Order Code RL34097, July 24, 2007) available at <http://www.fas.org/sgp/crs/misc/RL34097.pdf>.
41. CONGRESSIONAL QUARTERLY'S GUIDE TO CONGRESS, *supra* note 10, at 256.
42. See 18 U.S.C. § 6002 (2000).
43. See CONGRESSIONAL QUARTERLY'S GUIDE TO CONGRESS, *supra* note 10, at 256-57 for a discussion of how, under an 1857 immunity statute, embezzlers who had testified before Congress escaped prosecution.
44. North's conviction was set aside on appeal when it was shown that the trial judge had not ensured that witnesses had not used North's congressional testimony to refresh their memories. *Id.* at 258.

¶13 Closely related to the issue of immunity are general issues involving witnesses. A close examination of the bibliography demonstrates that witness issues, most notably witnesses' rights (covered under constitutional issues) and more generally how committees treat witnesses, came to the forefront during the 1950s and the internal security investigations. As the famous Army-McCarthy hearings demonstrate, once Senator McCarthy's tactics were seen by the American people, he lost support, and the issue of how witnesses were handled became important.<sup>45</sup>

¶14 Considering the disputes that naturally crop up during the course of an investigation, be it between Congress and the executive or between a committee and a witness, it should come as no surprise that the courts eventually get involved. The courts tend to be reticent about intervening in what can easily be declared "political questions"; however, it has been the courts that have consistently provided the boundaries within which congressional investigations take place. In rulings from early in the twentieth century, the Supreme Court confirmed Congress's power to investigate<sup>46</sup> and created clear, though broad, limitations on that power,<sup>47</sup> defined the rights of witnesses,<sup>48</sup> and attempted to outline executive privilege.<sup>49</sup>

¶15 Contempt has always been a major issue in congressional investigations. Without the power to punish for contempt (either failing to appear or failing to provide evidence), the power of investigation would be worthless.<sup>50</sup> This power, however, is not without limits. A series of cases, beginning in 1881 with the case of *Kilbourn v. Thompson*,<sup>51</sup> began to limit Congress's powers of punishing witnesses for contempt. In *McGrain v. Daugherty* the Court went further and stated that Congress had no "general power" of investigation. Instead, the Court stated that "a witness rightfully may refuse to answer where the bounds of the power are exceeded or the questions are not pertinent to the matter under inquiry."<sup>52</sup> The Court has now moved on to a balancing test in which the witness's rights are balanced again the government's interest.<sup>53</sup>

¶16 The doctrine of executive privilege always swirls around a congressional investigation when that investigation concerns the executive branch. There is a long history of presidents seeking to head off congressional investigations by citing "executive privilege."<sup>54</sup> The privilege has been invoked to cover "'state secrets,' law

45. *See id.* at 255–56, 272–73.

46. *See McGrain v. Daugherty*, 273 U.S. 135, 174 (1927).

47. *Id.* at 175–76.

48. *Barenblatt v. United States*, 360 U.S. 109, 126–27 (1959).

49. *See United States v. Nixon*, 418 U.S. 683, 703–13 (1974).

50. Without the power Congress would be "exposed to every indignity and interruption that rudeness, caprice, or even conspiracy may meditate against it." *Anderson v. Dunn*, 19 U.S. 204, 228 (1821).

51. *Kilbourn v. Thompson*, 103 U.S. 168 (1881).

52. *McGrain v. Daugherty*, 273 U.S. 135, 176 (1927).

53. *Barenblatt*, 360 U.S. at 126.

54. *See Neil Devins, Congressional-Executive Information Access Disputes: A Modest Proposal—Do Nothing*, 48 ADMIN. L. REV. 109, 113 (1996); MORTON ROSENBERG, PRESIDENTIAL CLAIMS OF EXECUTIVE PRIVILEGE: HISTORY, LAW, PRACTICE AND RECENT DEVELOPMENTS 1 (Cong. Research Serv., CRS Report for Congress, Order Code RL30319, Sept. 17, 2007), available at <http://www.fas.org/sgp/>

enforcement investigations, and confidential information that reveals the executive's 'deliberative process.'"<sup>55</sup> This "deliberative process" rationale is usually based upon the case of *United States v. Nixon*<sup>56</sup> in which the Court identified the value of the president receiving candid advice from his advisors and said that "any expectation of subsequent disclosure might temper needed candor."<sup>57</sup> Once the president invokes executive privilege, the information in question is presumptively privileged. However, the privilege is not absolute; Congress can overcome the presumption by demonstrating a need for the information in question.<sup>58</sup> Courts have been reluctant to get caught in the middle of these disputes and have only done so when the other two branches have not been able to come to a resolution.<sup>59</sup> Such a dispute regarding the release of "privileged" information is going on at the time of this writing regarding the congressional investigation of the Department of Justice's firing of nine U.S. Attorneys General. Given how deeply both sides are entrenched, it is possible that the courts may be asked to resolve this dispute and further refine the definition of "executive privilege."<sup>60</sup>

¶17 The bibliography also includes articles that discuss particular committees or particular investigations. These articles tend to be historical in nature, reviewing the work of a committee, usually one the writer worked on in some capacity. They provide a good look into how the committees do their work, and often contain helpful advice on running a committee.

¶18 The courts have placed limits on Congress's power to investigate. As noted earlier, the Supreme Court has limited Congress's ability to issue contempt citations to witnesses under certain circumstances. Supreme Court cases have drawn other boundaries that restrict the investigative powers of Congress. In *McGrain v. Daugherty* the Court held that investigations were an "appropriate auxiliary to the legislative function."<sup>61</sup> A brighter line on the limitations of congressional investigations was drawn in *Watkins v. United States* where the Court said:

There is no general authority to expose the private affairs of individuals without justification in terms of the functions of the Congress. . . . Nor is the Congress a law enforcement or trial agency. These are the functions of the executive and judicial departments of govern-

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crs/secretcy/RL30319.pdf. While we often read of presidents refusing to cooperate with congressional investigations, this is not always the case. See, e.g., Stephen W. Stathis, *Executive Cooperation: Presidential Recognition of the Investigative Authority of Congress and the Courts*, 3 J.L. & POL. 183 (1986) (tracing episodes in which presidents from George Washington to Ronald Reagan cooperated with Congress in its investigations; the episodes are grouped by category: personal consultations, testimony, release of documents and information, and participation in judicial proceedings).

55. ROSENBERG, *supra* note 54, at 10.

56. *United States v. Nixon*, 418 U.S. 683 (1974).

57. ROSENBERG, *supra* note 54, at 10.

58. *Id.* at 2.

59. *Id.*

60. See Dan Eggen, *House Panel Nears a Legal Clash with Bush over Firings*, WASH. POST, July 24, 2007, at A4; Dan Eggen & Amy Goldstein, *Broader Privilege Claimed in Firings; White House Says Hill Can't Pursue Contempt Case*, WASH. POST, July 20, 2007, at A1.

61. *McGrain v. Daugherty*, 273 U.S. 135, 174 (1927).

ment. No inquiry is an end in itself; it must be related to, and in furtherance of, a legitimate task of the Congress.<sup>62</sup>

¶19 The Court has placed other limitations on investigations, including that the investigation must be within the scope of authority granted to a committee by its parent body. Besides these limitations, the authority of an investigating committee is vast, “once having established its jurisdiction and authority, and the pertinence of the matter under inquiry to its area of authority, a committee’s investigative purview is substantial and wide-ranging.”<sup>63</sup>

¶20 You will rarely see a witness before an investigatory committee without his lawyers. Issues of attorney-client relations, including the attorney-client privilege are covered. These articles tend toward the practical, but they raise issues that have not been adequately explored elsewhere.

## Methodology

¶21 Behind every bibliography lies the methodology used to compile it. The “methodology” is not only the mechanism of how sources were brought together, but also includes how particular sources were selected, and others eliminated.

¶22 The present bibliography makes no claim to be exhaustive, but does include as many relevant sources as the author could identify. Completeness and historic perspective were considered. Once sources were compiled, a winnowing process occurred in which sources of limited value were omitted. First, case notes were cut, as these notes lack the in-depth analysis provided by the more scholarly articles that discuss the case.<sup>64</sup> Second, law reviews and their scholarly content were preferred over bar journals and practice-oriented materials. Articles from obscure law reviews such as the *New York University Intramural Law Review*, *Brooklyn Barrister*, or *Law Notes* were avoided as being difficult to locate, many times dated, and without a unique perspective.

¶23 The categories used were created after reviewing the titles of the individual articles. Each article has been placed in only one category even if it could easily fit into more than one, in order to avoid confusion and length.

¶24 Annotations are not included for the Congressional Research Service reports as their titles are clear indications of their subject matter.

¶25 Considering that congressional investigations have dominated the news since President Clinton’s first term, and have been a staple of the news from

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62. *Watkins v. United States*, 354 U.S. 178, 187 (1957).

63. MORTON ROSENBERG, *INVESTIGATIVE OVERSIGHT: AN INTRODUCTION TO THE LAW, PRACTICE, AND PROCEDURE OF CONGRESSIONAL INQUIRY 3* (Cong. Res. Serv., CRS Report for Congress, Order No. 95-464 A, Apr. 7, 1995), available at <http://www.ncseonline.org/nle/crsreports/government/gov-3.cfm> (citing *Wilkinson v. United States*, 365 U.S. 399, 408–09 (1961)).

64. I have distinguished “case notes” from other student-authored notes on the basis that the former are discussions of individual cases whereas the latter are often broader discussions of more general topics.

Congress since Watergate, the hope is that this bibliography will serve as a continuing resource for all those interested in this widely seen, but little understood, function of Congress.

## Bibliography of Sources Related to Congressional Investigations

### *Constitutional Amendments*

“Application of the Fourth Amendment to Congressional Investigations.” *Minnesota Law Review* 52 (1968): 665–97.

This note discusses a variety of protections for witnesses called before congressional investigating committees and posits a standard the Supreme Court should adopt when analyzing these protections.

Bendich, Albert M. “First Amendment Standards for Congressional Investigation.” *California Law Review* 51 (1963): 311–29.

“It is the purpose of this article to demonstrate that at present there are no satisfactory or even reasonable standards by which the powers of the committees or the rights of witnesses can be assessed constitutionally, and as a consequence, it is imperative that the controlling precedents be carefully reconsidered” (p.312).

Clark, Thomas P., and Ronald J. Stites. “First Amendment: Congressional Investigations and the Speech or Debate Clause.” *UMKC Law Review* 40 (1971): 108–28.

This student note raises an interesting issue regarding the free speech rights of individuals versus the protected “speech and debate clause” rights of Congress. The background was a 1970 House Committee on Internal Security report listing the names of some college campus speakers along with their associations or affiliations and the amount of their fees. The report implied that these fees were going to finance certain “radical” organizations. The purpose of the report was to warn students, parents, alumni, and others of potentially revolutionary propaganda occurring on college campuses. One of the speakers, Nat Hentoff, sued to suppress the report, alleging the report was an infringement of the speaker’s First Amendment rights. The court, in *Hentoff v. Ichord*, 318 F. Supp 1175 (D.D.C. 1970), found no legislative purpose in the investigation, and that the report was produced in infringement of the speaker’s First Amendment rights. The court also found that it had no power to prevent the report being discussed on the floor of Congress or from being printed in the *Congressional Record*. The balance of the article discusses the balancing of these two constitutional rights.

“Congressional Investigations and First Amendment Restrictions on the Compulsion of Testimony.” *Indiana Law Journal* 29 (1954): 162–73.

The author of this note raises the problem of witnesses refusing to testify, and then only being able to vindicate themselves through a prosecution for contempt. The main discussion focuses on the argument that a witness who is compelled to testify has his First as well as his Fifth Amendment rights violated, and how the Supreme Court should rule on this question.

Cooper, Marvin. "Congressional Investigations, First Amendment Freedoms and Due Process of Law." *Hastings Law Journal* 11 (1960): 322–34.

This article discusses the question of a witness's right to refuse to answer material questions from a congressional investigative body based upon the witness's First Amendment rights.

Downey, Arthur T. "Constitutional Law—First Amendment—Rights of Witness Before Congressional Investigation Committee." *Villanova Law Review* 7 (1961): 84–104.

The aim of this comment is to assess the impact of the collision between Congress's investigative function and the rights of witnesses, and "to assess the impact legislative investigations have had on the First Amendment freedoms and to speculate as to the validity of the result" (p.84).

Dyk, Timothy B., and Ralph E. Goldberg. "The First Amendment and Congressional Investigations of Broadcast Programming." *Journal of Law and Politics* 3 (1987): 625–63.

This article argues that in the process of investigating broadcast television, Congress has overstepped the parameters set for its investigatory authority. The reason is that Congress clearly will not legislate in certain areas regarding broadcast television, and could not legislate for constitutional reasons. The authors suggest more attention be paid to First Amendment issues in the context of congressional investigations.

Fisk, Jedolyn Jean Johnson. "Compulsory Testimony of the Congressional Witness and the Fifth Amendment." *Oklahoma Law Review* 15 (1962): 151–72.

This article discusses the development of Congress's power to investigate and the balancing inherent between this power and the Fifth Amendment protection against self-incrimination.

Massey, M. Minnette. "Congressional Investigations and Individual Liberties." *University of Cincinnati Law Review* 25 (1956): 323–41.

Another article discussing the impact of the First Amendment free speech protections on congressional investigations.

Pollit, Daniel H. "Fifth Amendment Plea Before Congressional Committees Investigating Subversion: Motives and Justifiable Presumptions—A Survey of 120 Witnesses." *University of Pennsylvania Law Review* 106 (1958): 1117–37.

The author interviewed 120 persons who had testified before congressional investigating committees and had taken the Fifth Amendment to learn why they invoked the privilege against self-incrimination.

Rudd, Myron S. "Congressional Power of Investigation and Freedom of Speech, With Reference to the Un-American Activities Committee." *University of Cincinnati Law Review* 17 (1948): 264–76.

This editorial note discusses the results of two appellate cases that answered the question of whether the House Un-American Activities Committee could explore and publicize the political beliefs of a private citizen.

Summer, Marvin. "First Amendment as a Restraint on the Power of Congress to Investigate." *Marquette Law Review* 43 (1960): 459–82.

The author examines cases where witnesses have refused to answer questions based upon their First Amendment rights and how related litigation over First Amendment rights has played out, as well as discussing trends in the law.

Teller, Jerome S. "Congressional Investigations—Self-Incrimination, Condemnation, and Fair Hearing." *University of Cincinnati Law Review* 22 (1953): 193–207.

The author of this note explores the history of the Fifth Amendment in order to resolve the conflict between congressional investigative committees' need for information and the citizen witness's individual rights. The history and scope of the privilege are discussed, as are waiver and immunity. Teller advocates that Congress reform its investigatory methods to protect innocent witnesses.

Trimble, E. G. "Self-Incrimination and Congressional Investigations." *Kentucky Law Journal* 44 (1956): 333–42.

The author traces the history of the Fifth Amendment and its interaction with congressional investigating committees. He reviews cases touching upon the issue, although until 1954 the issue of a witness pleading the Fifth Amendment before a congressional investigating committee had never directly come before the Supreme Court. A good short review of the relevant cases up to the time the article was written.

### *Immunity*

Ghio, R.S. "The Iran-Contra Prosecution and the Failure of Use Immunity." *Stanford Law Review* 45 (1992): 229–61.

This article takes the position that the "use and derivative use immunity" that replaced transactional immunity is a legal fiction and makes the investigation and prosecution of alleged criminals more difficult. Ghio also recommends that the Supreme Court revisit its decision in *Kastigar v. United States*, 406 U.S. 441 (1972), and that the Court use a broader interpretation of the Fifth Amendment prohibition against compelled incriminatory testimony.

Gilbert, Michael. "The Future of Congressional Use Immunity After *United States v. North*." *American Criminal Law Review* 30 (1993): 417–39.

This note takes on the issue of the tension between a legislative grant of immunity to further the investigative function and the desire of the executive to prosecute wrong-doers. The author argues that in the wake of the *U.S. v. North* and *U.S. v. Poindexter* decisions, which the author asserts were wrongly decided, new action needs to be taken. The author traces the history of "use immunity," analyzes the above referenced legal decisions, evaluates the competing interests, and makes recommendations.

Sklamberg, Howard R. "Investigation Versus Prosecution: The Constitutional Limits on Congress's Power to Immunize Witnesses." *North Carolina Law Review* 78 (1999): 153–215.

There is a tension between a congressional investigation and a criminal investigation by the Department of Justice. If Congress grants immunity to encourage

testimony, a criminal investigation and later prosecution is hampered. The author argues that this violates the doctrine of the separation of powers, and Congress should only grant immunity when the witness is critical to a congressional investigation.

Van Cleve, George W., and Charles Tiefer. "Navigating the Shoals of 'Use' Immunity and Secret International Enterprises in Major Congressional Investigations: Lessons of the Iran-Contra Affair." *Missouri Law Review* 55 (1990): 43–92.

In this article the authors discuss Congress's investigatory power and the issues regarding that power raised by the Iran-Contra affair, with special attention to "use" immunity and the investigation of overseas operations established for the purpose of avoiding public scrutiny.

Wright, Ronald F. "Congressional Use of Immunity Grants After Iran-Contra." *Minnesota Law Review* 80 (1995): 407–68.

The author, in his own words, "sort[s] out how the law of immunity combines with political forces to shape congressional investigations of the executive branch that take place at the same time as criminal investigations" (p.410). There are problems with parallel investigations of the executive branch by Congress and criminal prosecutors; most of these problems stem from congressional grants of immunity in exchange for testimony, thus spoiling future criminal prosecutions (as occurred during the Iran-Contra scandal). Wright has some prescriptions for dealing with this problem, recognizing that it can never really go away. He believes that Congress should not give way to the criminal investigation since that puts too much faith in the criminal law and fosters the cynical idea that congressional investigations are merely platforms for posturing and demagoguery.

### *Witnesses*

Carr, Thomas P. *House Committee Hearings: Arranging Witnesses*, Congressional Research Service Report for Congress, Order No. 98-304 GOV, Mar. 15, 2001.

"Congressional Investigations: Their Effect on a Witness' Right to a Fair Trial." *Alabama Law Review* 22 (1970): 554–90.

This comment focuses on whether, after Congress conducts an investigation of an individual, that individual can receive a fair trial for a matter related to the subject of the investigation.

Henry, Gaylord L., et al. "Rights of Witnesses Before Congressional Investigating Committees." *Marquette Law Review* 35 (1951): 282–92.

The author of this comment attempts to answer two questions: what are the limits of the investigatory power of Congress and what are the legal rights of witnesses called to testify before an investigating committee of Congress?

Inman, Leslie L. "Congressional Investigations—Rights of Witnesses." *Tulane Law Review* 26 (1952): 381–88.

This comment discusses a witness's defenses in refusing to answer questions before a congressional investigating committee: a lack of pertinence of questions asked, the privilege against self-incrimination, and the prejudicial manner in which the hearing was conducted.

Rosenberg, Morton. *Investigative Oversight: An Introduction to the Law, Practice and Procedure of Congressional Inquiry*, Congressional Research Service Report for Congress, Order No. 95-464, Apr. 7, 1995.

Van Der Slik, Jack R., and Thomas C. Stenger. "Citizen Witnesses Before Congressional Committees." *Political Science Quarterly* 92 (1977): 465–85.

Written by two political scientists, this article explores in an empirical fashion the relationship between the governing elite and the governed population within the context of citizens who appear before House investigating committees.

### *Courts and Cases*

Alfange, Dean, Jr. "Congressional Investigations and the Fickle Court." *University of Cincinnati Law Review* 30 (1961): 113–71.

The author sets out to demonstrate how the Supreme Court's decision in *Barenblatt* represented "a new acme of judicial disingenuousness" in that it went against everything they had decided in *Watkins* a mere two years earlier. It is the author's opinion that *Watkins* was the correctly decided case. He advocates a "balancing of interests" test between Congress's needs and individual rights under the First Amendment.

Fleischmann, Hartly. "*Watkins v. United States* and Congressional Power of Investigation." *Hastings Law Journal* 9 (1958): 145–66.

The *Watkins* case gave some protection to witnesses who are called to answer questions before a congressional investigating committee. The author in this article describes the case and how these issues were handled prior to *Watkins*, and makes predictions for the future.

Harpine, C. Allen. "Congressional Investigating Power—Judicial Interpretations of the Scope of Inquiry." *American University Law Review* 5 (1956): 64–81.

A student-written article that serves as a good review of the court cases interpreting the power of Congress to investigate and compel the testimony of witnesses. The author includes a brief background on the history of congressional investigation and then discusses past congressional investigations that have resulted in court cases.

McKay, Robert B. "Congressional Investigations and the Supreme Court." *California Law Review* 51 (1963): 267–95.

Good, comprehensive review of the case law of the Supreme Court on the issues of: 1) legislative purpose and the First Amendment, 2) self-incrimination and free speech, 3) executive privilege and separation of powers. The author uses his conclusion to summarize the current law and discuss the case of *Yellin v. United States*.<sup>65</sup>

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65. At the time this article was written, *Yellin v. United States*, 374 U.S. 109 (1963), had not been decided. In *Yellin*, a suspected communist was prosecuted for contempt of Congress for failing to answer questions. The Supreme Court reversed *Yellin's* conviction based on the fact that the committee in question failed to follow its own rules on the issue of allowing witnesses to testify in closed session.

Millikan, Kent B. "Congressional Investigations: Imbroglia in the Court." *William and Mary Law Review* 8 (1967): 400–20.

The author of this article takes issue with the Supreme Court's jurisprudence on the legal status of congressional investigating committees and the witnesses who appear before them. Pointing out that the creation of the House Un-American Activities Committee fostered a great deal of this litigation, he reviews twenty years of Supreme Court rulings on witness/committee interaction. He takes issue with the Court's see-sawing decisions and its policy of not interfering with congressional investigations, and says the unsettled law in this area does both witness and committee a disservice.

Morgan, Gerald D. "Congressional Investigations and Judicial Review—*Kilbourn v. Thompson* Revisited." *California Law Review* 37 (1949): 556–74.

This article raises the question of whether courts intrude into the legislative function when Congress holds investigations, in the context of *Kilbourn v. Thompson*. In *Kilbourn* the Court held that since the House had no jurisdiction to legislate on a particular matter, a House committee had no jurisdiction to inquire into that same subject. The author analyzes this case and comes to the conclusion that the Court did not understand the investigative function, and in this context treated Congress as simply another inferior tribunal.

Shapiro, Martin. "Judicial Review: Political Reality and Legislative Purpose: The Supreme Court's Supervision of Congressional Investigations." *Vanderbilt Law Review* 15 (1962): 535–57.

Shapiro is critical of the Supreme Court's 'legislative purpose' requirement for congressional investigating committees. His view is that the doctrine "distorts the Court's traditional role as balancing power between individual freedom and the interests of society" (p.535). Shapiro feels strongly that the Court has not done enough to protect citizens' civil rights when dealing with congressional committees.

Slotnick, Michael C. "Congressional Investigating Power: Ramifications of the *Watkins-Barenblatt* Enigma." *University of Miami Law Review* 14 (1960): 381–411.

The author reviews congressional investigations in the period before the *Watkins* decision, analyzes the *Watkins* decision, and discusses what came after *Watkins*, namely, the case of *Barenblatt v. United States*, and how that case, less favorable to witnesses, came to determine the law. He concludes that the issue of the pertinence of the investigation is the witness's strongest defense.

### ***Contempt and Enforcement***

"Congressional Contempt Power in Investigations into the Area of Civil Liberties." *University of Chicago Law Review* 14 (1947): 256–69.

This note examines the contempt power of Congress as it relates to the Constitution and other limitations imposed by the courts. The article then goes on to analyze the contempt power, the necessity for securing judicial interpretation of the power, and what limitations should be placed on HUAC in particular, due to its record on civil liberties and use of the contempt power.

“Congressional Investigation and Contempt of Congress.” *Boston University Law Review* 32 (1952): 326–35.

This note traces the history of Congress’s power to punish witnesses with contempt and attempts to interpret the contempt statute. The author notes the key cases in this area, laying out the facts and the law, and analyzing the interpretation of statutes governing the contempt sanction. The author further discusses the defenses to contempt.

Driver, Martha M. “Constitutional Limitations on the Power of Congress to Punish Contempts of its Investigating Committees.” *Virginia Law Review* 38 (1952): 887–911 (Part I), 1011–33 (Part II).

This article is an in-depth discussion of the application of the First, Fourth, and Fifth Amendments to limitations on the congressional investigatory power.

Fisher, Louis. *Congressional Investigations: Subpoenas and Contempt Power*. Congressional Research Service Report for Congress, Order No. RL31836, Apr. 2, 2003.

Managan, James J. “Contempt for the Fourth Estate: No Reporter’s Privilege Before a Congressional Investigation.” *Georgetown Law Journal* 83 (1994): 129–64.

This note traces Congress’s investigatory power and the facts of a famous investigation into a reporter receiving confidential information, the limitations on congressional power, and the question of whether a reporter’s privilege exists in this context.

Moreland, Allen B. “Congressional Investigations and Private Persons.” *Southern California Law Review* 40 (1967): 189–273.

This article examines, in some depth, Congress’s power to punish for contempt. The article focuses only on private parties and individuals, not other government actors. In addition, the article discusses the rights available before the committee.

“Power of Congress to Investigate and Compel Testimony.” *Harvard Law Review* 70 (1957): 671–85.

This note does a good job of laying out the state of the law at the time it was written. It makes reference to the “recent practices of some congressional investigating committees,” and how those committees have “focused critical interest upon the constitutional limits of the power of Congress to compel testimony and the scope of the contempt statute applicable to a witness who refuses to testify” (p.671). The author then deals with the major issues surrounding committee investigations, including the scope of Congress’s power to compel testimony, limitations on the power, punishment under the contempt statute, committee jurisdiction, and punishment.

Rosenberg, Morton, and Todd B. Tatelman. *Congress’s Contempt Power: Law, History, Practice, and Procedure*. Congressional Research Service Report for Congress, Order No. RL34097, July 24, 2007.

Shampansky, Jay R. *Congress’ Contempt Power*. Congressional Research Service Report for Congress, Order No. 86-83A, Feb. 28, 1986.

Sky, Theodore. "Judicial Review of Congressional Investigations: Is There an Alternative to Contempt?" *The George Washington Law Review* 31 (1962): 399–430.

The writer makes the argument that the only way for a witness to challenge a committee's investigative power is to be charged with contempt for not providing the requested information. The author argues that there should be another, less onerous, procedure available and discusses whether there are available alternatives to the current contempt-based procedure, or whether changes in the law are required to provide such alternatives.

### *Executive*

Berger, Raoul, *Executive Privilege: A Constitutional Myth*. Cambridge, Mass.: Harvard University Press, 1974.

In this book, Berger takes on the practice of executive privilege, which he defines as a "President's claim of constitutional authority to withhold information from Congress" (p.1). The author asserts that executive privilege is a myth and makes his argument by turning to history. Berger has written an in-depth history of the concept of executive privilege and how it has developed and been viewed throughout American history.

Berger, Raoul. "Congressional Subpoenas to Executive Officials." *Columbia Law Review* 75 (1975): 865–96.

In this article, Professor Berger focuses on "how far a court is warranted in substituting its judgment for that of a congressional committee when asked to enforce its subpoena" (p.865). The context of the article is a subpoena issued to President Nixon for tape recordings, which the president refused to comply with. The Court of Appeals for the D.C. Circuit upheld the refusal, based on the communications in the tapes being presumptively privileged, holding they could only be released by a showing of public need. The author reviews the history of judicial review of such subpoenas, how such subpoenas are handled when issued to private citizens, and how those latter decisions apply to members of the executive branch. Berger has written extensively about issues of executive privilege, which he believes to be a myth. This article is at one with his other writings on the subject.

Brand, Stanley M., and Sean Connelly. "Constitutional Confrontations: Preserving a Prompt and Orderly Means by Which Congress May Enforce Investigative Demands Against Executive Branch Officials." *Catholic University Law Review* 36 (1986): 71–91.

This article takes up the issue of congressional oversight of executive agencies by means of congressional investigatory committee requests for information. The authors propose a statutory solution to settle the problem of executive officials refusing requests for information by virtue of executive privilege. After reviewing the current situation, and the history of executive refusals, the authors critique various proposals and finally recommend the appointment of a special prosecutor combined with Congress's contempt power and a criminal prosecution process as the most likely solution for resolving these types of conflicts.

Broughton, Richard J. "Paying Ambition's Debt: Can the Separation of Powers Tame the Impetuous Vortex of Congressional Investigations?" *Whittier Law Review* 21 (2000): 797–837.

The author examines the struggle between the executive and the congressional investigating committee. The history of Congress's investigative power is discussed, and the power of executive privilege is examined. The author then focuses the question on whether executive privilege can trump a request for information when the information is requested from the president himself, resolving the question in favor of Congress.

Bush, Joel D. "Congressional Executive Access Disputes: Legal Standards and Political Settlements." *Journal of Law and Politics* 9 (1993): 719–47.

This student note is a broad examination of the issues involved in executive assertions of privilege and congressional responses. It reviews the judicial responses to such impasses, the legal principles behind the confrontation, and the role politics plays in these disputes. The author explores both litigated and non-litigated disputes to answer the questions he poses.

Clavelaux, Ronald L. "The Conflict Between Executive Privilege and Congressional Oversight: The *Gorsuch* Controversy." *Duke Law Journal* (1983): 1333–58.

This note discusses the issues involved in executive assertions of privilege in response to congressional requests for information within the context of the *Gorsuch* case. In 1982 EPA officials refused to comply with a congressional request for information. A subpoena was issued to the EPA administrator, Anne M. Gorsuch. President Reagan instructed Gorsuch not to appear, and she was subsequently held in contempt of Congress. Eventually a compromise was reached between Congress and the executive branch. The note reviews the law in relation to this case and provides an analysis for future disputes of this nature.

Collins, Philip R. "Power of Congressional Committees of Investigation to Obtain Information From the Executive Branch: The Argument for the Legislative Branch." *Georgetown Law Journal* 39 (1951): 563–98.

The author states that, "[i]n this article, the writer merely proposes to discuss the power of these committees to obtain information and documentation from the executive branch of our government" (p.564).

Devins, Neal. "Congressional-Executive Information Disputes: A Modest Proposal—Do Nothing." *Administrative Law Review* 48 (1996): 109–37.

As the title indicates, Professor Devins makes a persuasive argument that sometimes the best way to handle a situation is to do nothing. He applies that maxim to conflicts between congressional requests for information and executive resistance to such requests through the invocation of executive privilege. In the author's opinion, because there are many such disputes, but very few result in contempt charges, the current system of negotiation and compromise between the branches is working and needs no alternative solution.

Ehlke, Richard. *Congressional Access to Information from the Executive: A Legal Analysis*, Congressional Research Service Report for Congress, Order No. 86-50A, Mar. 10, 1986.

Fisher, Louis. *The Politics of Executive Privilege*. Durham, N.C.: Carolina Academic Press, 2004.

Fisher, a specialist in separation of powers issues at the Congressional Research Service, is the perfect person to write about issues of congressional access to

executive branch information, which, essentially, is what executive privilege is all about. While the battles between Congress and the president are often couched in legal terms, it is Fisher's assertion that in the end legal arguments do not win these stand-offs. Fisher's thesis is that political considerations by both sides usually lead to a settlement. Fisher traces assertions of executive privilege, from the beginning of the republic to the present, and demonstrates the different methods Congress has used to overcome assertions of executive privilege, including the appropriations, impeachment, and appointment powers; subpoenas; contempt; and GAO investigations. Fisher also examines national security claims (very timely), and has an opinion regarding the current administration's "unitary executive" theory (he's against it).

Fisher, Louis. *Congressional Access to Executive Branch Information: Legislative Tools*, Congressional Research Service Report for Congress, Order No. RL31836, Apr. 2, 2003.

Hamilton, James, and John C. Grabow. "A Legislative Proposal for Resolving Executive Privilege Disputes Precipitated by Congressional Subpoenas." *Harvard Journal on Legislation* 21 (1984): 145–72.

The authors point out the limitations of Congress's power to enforce subpoenas and propose legislation that would give Congress a civil remedy to enforce its subpoenas.

Hruska, Roman L. "Executive Records in Congressional Investigations—Duty to Disclose—Duty to Withhold." *Nebraska Law Review* 35 (1956): 310–16.

Written by a U.S. Senator, this article discusses instances when executives withheld information from Congress, and what the author calls "underlying principles," which appear to be guidelines that have been followed in the instances to which he refers.

Iraola, Roberto. "Congressional Oversight, Executive Privilege, and Requests for Information Relating to Federal Criminal Investigations and Prosecutions." *Iowa Law Review* 87 (2002): 1559–99.

The author, a senior legal advisor to the F.B.I. general counsel, examines the legal basis for congressional requests for information from the executive concerning a criminal investigation. He explores separation of powers issues, the source of congressional power regarding investigations, the source of executive privilege, and discusses the relevant cases and the process whereby the different branches come to agreements.

Marshall, William P. "Limits on Congress' Authority to Investigate the President." *University of Illinois Law Review* (2004): 781–828.

The author argues that the proliferation of congressional investigations of the executive is caused by the fact that Congress has nothing to lose. His solution is to limit the process so that Congress will have to expend political capital to undertake such an investigation. By focusing on reforming the process, Congress will not be limited in engaging in legitimate and necessary oversight.

Milloy, Richard P. "Power of the Executive to Withhold Information From Congressional Investigating Committees." *Georgetown Law Journal* 43 (1955): 643–60.

In this note the author addresses the executive/investigatory committee conflict and comes down on the side of the executive. The problem is framed based on a dispute that occurred during the Army-McCarthy hearings, when John G. Adams, counselor for the Department of the Army, was instructed not to testify about meetings he attended discussing the charges Senator McCarthy brought against the Army. Citing arguments based on the separation of powers, history, and legal precedent, the author concludes that “the legislative investigating committees have no more right to subject the executive to their will than the executive has to impose his will upon Congress” (p.659).

Myers, Abram F. “Power of Congress to Investigate the Executive.” *Georgetown Law Journal* 12 (1923): 1–18.

The author traces the concept of separation of powers and disputes between the executive and the legislative over releases of information. This is a historical article tracing disputes between the branches and their results. He concludes that the legislature does not have general supervisory powers over the executive, and where they do have supervisory power (impeachment), it is a departure from the normal constitutional system.

1992–1993 Staff of the Legislative Research Bureau. “An Overview of Congressional Investigation of the Executive: Procedures, Devices, and Limitations of Congressional Investigative Power.” *Syracuse Journal of Legislation and Politics* 1 (1995): 1–27.

This article is an excellent general introduction to the world of the congressional investigation, although it focuses on investigations targeting the executive branch. The authors lay out the basics of the why and how of investigations, including the sources of Congress’s power through both constitutional and statutory instruments. The devices Congress uses to conduct an investigation are discussed, including subpoenas, staff depositions, perjury, immunity, and contempt. The limits of Congress’s powers are also discussed, and all is brought together by a review of recent contested investigations. Overall, this article is a good place to start learning about congressional investigations as they apply to the executive branch.

Peterson, Todd David. “Congressional Oversight of Open Criminal Investigations.” *Notre Dame Law Review* 77 (2002): 1373–448.

The author argues that the president should order the Department of Justice to refuse to provide Congress with information from an open criminal investigation without an assertion of executive privilege in each individual case. This privilege would last until an indictment is brought or the investigation is closed. After that, the privilege should be asserted on a case-by-case basis. The article provides an excellent historical discussion of these issues.

Peterson, Todd D. “Prosecuting Executive Branch Officials for Contempt of Congress.” *New York University Law Review* 66 (1991): 563–632.

This article tackles the disputes between the executive and legislative branches regarding executive privilege by advocating that each branch develop its own doctrine of executive privilege and apply that doctrine within its “primacy,” indicating that there is no correct law for all settings. The author argues that there will be instances in which one branch must accept the primacy of the other branch’s understanding of the law of executive privilege.

Relyea, Harold, and Jay R. Shampansky, *Presidential Advisors' Testimony Before Congressional Committees: An Overview*, Congressional Research Service Report for Congress, Order No. RL31351, Oct. 6, 2004.

Rosenberg, Morton. *Presidential Claims of Executive Privilege: History, Law, Practice, and Recent Developments*, Congressional Research Service Report for Congress, Order No. RL30319, Sept. 21, 1999.

Rosenthal, Paul C., and Robert S. Grossman. "Congressional Access to Confidential Information Collected by Federal Agencies." *Harvard Journal of Legislation* 15 (1977): 74–118.

This article tackles the question of congressional access to information. The authors argue that when industry turns information over to federal regulatory agencies, those agencies must turn over to Congress information that Congress requests. Although the industries assert that this information is private, the authors argue that Congress must have this information to perform its duties.

Rozell, Mark J. *Executive Privilege: Presidential Power, Secrecy, and Accountability*. 2d ed. Lawrence, Kan.: University Press of Kansas, 2002.

Rozell lays out the arguments for and against executive privilege and how the concept has changed quickly since the Nixon presidency. Rozell does not take an absolutist position regarding executive privilege. Instead he treats it as a "bundle of powers" that must be used sparingly and only for the public good, as opposed to benefiting the executive by allowing it to be used as a cloak for misdeeds and scandal.

Schwartz, Bernard. "Executive Privilege and Congressional Investigatory Power." *California Law Review* 47 (1959): 3–50.

The author begins this article with his personal recollections of trying to secure information from the executive branch. This acts as a frame for his analysis of the concept of executive privilege. He covers a lot of ground with section headings of "Executive Claims," "Separation of Powers," "Case Law," and "Statutes." The article presents a very thorough discussion of executive privilege as it was in 1959. The conclusion is noteworthy for the contrast it draws between the American and the French systems.

Shane, Peter M. "Negotiating for Knowledge: Administrative Responses to Congressional Demands for Information." *Administrative Law Review* 44 (1992): 197–244.

The author attempts to tackle the problem of executive agencies sharing information with congressional investigators. Shane's solution is to add some needed structure in order to formalize the "ad hoc" negotiations that presently occur.

Shane, Peter M. "Legal Disagreement and Negotiation in a Government of Laws: The Case of Executive Privilege Claims Against Congress." *Minnesota Law Review* 71 (1987): 461–542.

The author claims that it is not necessary for one branch of government to be correct on the matter of separation of powers. Instead, Shane argues that each branch should have its own interpretation of executive privilege which is "entitled to primacy within the 'jurisdiction' of its branch" (p.465).

Stathis, Stephen W. "Executive Cooperation: Presidential Recognition of the Investigative Authority of Congress and the Courts." *Journal of Law and Politics* 3 (1986): 183–294.

This article traces, president by president, instances where the executive cooperated in congressional requests for information through consultations, testimony, release of documents, and participation in judicial proceedings.

Wald, Patricia, and Jay Siegel. "The D.C. Circuit and the Struggle for Control of Presidential Information." *Georgetown Law Journal* 90 (2002): 737–78.

The real focus of this article is on the D.C. circuit court and the decisions it makes in regard to releases of presidential information. The article discusses how and why the court gets in the middle of these disputes, and the law that has emerged.

Younger, Irving. "Congressional Investigations and Executive Secrecy: A Study in the Separation of Powers." *University of Pittsburgh Law Review* 20 (1959): 755–84.

Younger begins with a paean to the separation of powers and then reviews major executive/legislative branch disputes over the release of information. The review is punctuated by long quotes from original sources. The author then takes up the concept of "executive secrecy" (what is now called "executive privilege") which arises when the executive fails to produce information requested by Congress. He outlines the scope of the doctrine and historical instances when it has been invoked. The author concludes by discussing the use of the doctrine in relation to political tactics.

### *Particular Investigations and Committees*

Barlow, Robert A., Jr. "Investigation of Political Beliefs by Congressional Investigating Committees." *Nebraska Law Review* 27 (1948): 601–08.

This note takes up the issue of a witness who refuses to testify regarding his political beliefs because the First Amendment prevents Congress from legislating upon "matters of thought, speech, or opinion." The author recounts the scope of Congress's power to investigate and cites several cases, including *United States v. Josephson*, which is the basis of the fact pattern he lays out. The author mentions possible solutions, including restricting investigations where civil liberties are involved and granting the procedural guarantees more associated with judicial proceedings.

Baskir, Lawrence M. "Reflections on the Senate Investigation of Army Surveillance." *Indiana Law Journal* 49 (1974): 618–53.

The contents of this article can best be described by its author: "The purpose of this article is to describe how the Constitutional Rights Subcommittee conducted its investigation [into the problem of military surveillance of domestic political activities of American citizens], what role litigation played in the inquiry, and what the ultimate legislative response is likely to be. The investigation deserves to be examined for the insights it gives into the operation of the investigative role of Congress and for the knowledge it may give us of how the military establishment, and by extension, the entire executive branch, responds to legislative oversight" (p.619).

Brice, Bill E. "Constitutional Aspects of Congressional Investigations into Subversive Activities." *Southwestern Law Journal* 8 (1954): 212–24.

This article, written during the Red Scare of the 1950s, states that the author does not wish to be caught up in "political quarrels or partisan policies" (p.212). Instead he wants to explore the constitutional authority of these investigating committees in light of "practical reality in the United States today" (p.212). The article goes on to discuss the major cases that give guidance on the constitutional issues confronting investigative committees.

Carr, Robert K. "Investigations in Operation: The Un-American Activities Committee." *University of Chicago Law Review* 18 (1951): 598–663.

The author goes into great detail on how well the committee has operated and continues to operate and points out that HUAC is a permanent investigating committee with little real legislative work behind it. It is noted that HUAC has gone beyond what other committees do (gather facts for legislation, investigate agencies, etc.) and instead has defined un-American activities, and acted as a judicial agent to enforce policy in regard to subversive activity, appearing more like a detective agency or a grand jury. HUAC lacked a real agenda, jumping here and there, going after the weak, avoiding the strong, and did not have a consistent procedure for handling hearings; this point is emphasized by citing specific examples. Recommendations for changes included: improving the committee's staff, more planning in the committee's program, improving and standardizing procedures, and adoption of a code of fair procedures vis-à-vis witnesses.

Cook, Donald C. "Investigations in Operation: Senate Preparedness Subcommittee." *University of Chicago Law Review* 18 (1951): 634–46.

This article, similar to the one above, goes into great detail about the operation of an established congressional subcommittee, in this case the Senate Preparedness Subcommittee, which the author states is a reactivation of the WWII-era Truman Committee. He lays out the jurisdiction of the committee and the procedures it follows. The bulk of the article concerns itself with specific findings of the committee, which are of limited interest.

Davidson, G.E. "Congressional Extraterritorial Investigative Powers: Real or Illusory?" *Emory International Law Review* 8 (1994): 99–125.

This article points out that international legal issues are becoming more and more important, and that the tenor of many congressional investigations bear this out. It examines how international legal issues affect congressional investigations and what ramifications such investigations may have.

Davidson, Michael J. "Congressional Investigations and Their Effect on Subsequent Military Prosecutions." *Journal of Law and Policy* 14 (2006): 281–327.

This article, written by a retired army officer, examines how congressional investigations affect the government's ability to prosecute members of the military. The author focuses on the investigations of the My Lai massacre and the Iran-Contra scandal. The article begins with the obligatory overview of Congress's power to investigate, discusses prosecutorial issues under military law, reviews Congress's power to grant immunity, and concludes with a discussion of common law privileges after a compelled waiver during an investigation. The author concludes by supporting Congress's attitude after Iran-Contra of greater reluctance to grant immunity and instead allowing the criminal process to go forward.

Dembitz, Nanette. "Congressional Investigation of Newspapermen, Authors, and Others in the Opinion Field—Its Legality Under the First Amendment." *Minnesota Law Review* 40 (1956): 517–60.

The Eastland Committee tasked itself with investigating the existence of communism amongst persons and media who influenced public opinion. This article explores the First Amendment implications of congressional investigations in what the author terms the "opinion field," and discusses situations in which such an investigation would be justified.

Emerson, Frank D. "Congressional Investigation of Proxy Regulation: A Case Study of Committee Exploratory Methods and Techniques." *Villanova Law Review* 2 (1956): 75–94.

This article focuses on one specific committee investigation, concerned with proxy regulations promulgated by the SEC. The paper concentrates on the methods and techniques, and the data submitted by witnesses, used by the committee to conduct its investigation.

Gregory, William A., and Rennard Strickland. "Hugo Black's Congressional Investigation of Lobbying and the Public Utilities Holding Company Act: A Historical View of the Power Trust, New Deal Politics, and Regulatory Propaganda." *Oklahoma Law Review* 29 (1976): 543–76.

The authors present a detailed examination of Hugo Black's time in the Senate, the congressional investigations he spearheaded, and how these investigations impacted the New Deal.

"Investigations in Operation: House Select Committee on Lobbying Activities." *University of Chicago Law Review* 18 (1951): 647–57.

This article analyzes the work of the House Select Committee on Lobbying Activities. This particular committee seems to have had a great many successes as a result of being run the right way. The author points out that "[a]n evaluation of the investigatory process must concern itself with the conduct of the inquiry rather than the content of the final report" (p.656). This is important to keep in mind; while all committees tend to be highly partisan, if correct procedures are followed the results become more credible.

"Investigations in Operation: House Subcommittee on Monopoly Power." *University of Chicago Law Review* 18 (1951): 658–61.

This committee focused its investigation on monopolies in the steel industry. The author applauds how the investigation was conducted and the benefits that will accrue from the investigation having taken place. He states as positive results of the investigation that it provided an open forum for letting the industry tell its side of the story, that both sides now know of the other's position, and the committee got an education in monopolies. The lesson to be learned is that "[w]here fairness exists, competence seems to follow" (p.661).

Maskell, Jack. *Independent Investigations of Allegations of Wrongdoing by Members of Congress*, Congressional Research Services Report for Congress, Order No. 88-488A, July 6, 1988.

McGeary, M. Nelson. "Congressional Investigations During Franklin D. Roosevelt's First Term." *American Political Science Review* 31 (1937): 680–97.

This article is an empirical examination of congressional investigations during the 73rd and 74th Congresses. It is the author's thesis that during the New Deal congressional investigations had the backing of the president and were committed to social change. Such investigations supported the executive's agenda rather than monitoring or hindering it. McGeary examines the investigations that occurred during this period and categorizes each by one of six main purposes, one of which is whether they aided the administration.

Newman, Frank C. "Supreme Court, Congressional Investigations, and Influence Peddling." *New York University Law Review* 33 (1958): 796–810.

Newman begins his article with a description of a congressional investigation of several executive agencies to determine if they were following the law and that ended up being an investigation into influence peddling. From this introduction he attempts to defend four theses: 1) Supreme Court opinions don't imply that "flamboyant" investigations are improper, 2) proposed reforms would not protect government officials from harm, 3) if congressional investigations are performed in a sympathetic or "nice" way, wrongdoing will escape detection, and 4) "We can legislate morals, significantly" (p.797). Newman's argument is essentially one of practicality: if Congress is going to investigate wrongdoing and corruption, they sometimes have to get down in the muck to do it. He defends his theses by pointing out: 1) the Supreme Court's general "hands-off policy as to investigations" (p.798), 2) that corrupt public officials sometimes deserve to have their reputations damaged, 3) that investigations cannot always be gentlemanly since, "the tactics used by the other side to cover up bureaucratic errors and to protect massive interests in bureaucratic decision-making are by no means always gentlemanly" (pp.803-04), and finally 4) he gives examples of legislation (such as "don't-talk-to-judges statutes" (p.806)) that are on the books and enforced and that go a long way toward minimizing corruption.

Nunn, Sam. "The Impact of the Senate Permanent Subcommittee on Investigations on Federal Policy." *Georgia Law Review* 21 (1986): 17–56.

At the time the article was written, the author was a U.S. Senator from Georgia. In this article he writes a history of the Senate Permanent Sub-Committee on Investigations, which was created in 1948. The history includes the committee's work on labor corruption, organized crime, and government waste. Nunn includes the work of the sub-committee's most famous chairman, Joseph McCarthy, and famous witnesses such as Jimmy Hoffa and Joseph Valachi.

Perkins, James A. "Congressional Investigations of Matters of International Import." *American Political Science Review* 34 (1940): 284–94.

This article evaluates several investigations that occurred after World War I and considers whether Congress could control foreign policy through an investigation. The author states that there are three ways Congress influences foreign policy: 1) enacting legislation in areas within its scope (i.e., immigration, trade, treaties), 2) supervising the work of the executive branch in order to influence the direction of policies, and 3) forcing the president to create policies in areas where the president's power is supreme by molding public opinion. The author believes that congressional investigations have had little influence on foreign policy. He

analyzes nine investigations to discover why investigations have had so little effect. The reasons for failure often have to do with the origination of the investigation, minority support, biased results stemming from a partisan approach to conducting the actual hearings, faulty legislation resulting from bias, and poor organization in the form of insufficient budgets and staff. Another interesting reason for failure is that, in the author's opinion, as a tool for executive department oversight the congressional investigation is too little used and used to criticize rather than review. The solution, he posits, must come from Congress in the form of self-restraint when forming investigating committees.

Peterson, Todd David. "Congressional Investigations of Federal Judges." *Iowa Law Review* 90 (2004): 1–66.

This article discusses three recent investigations into federal judges and how these types of intra-branch disputes can be resolved. The solution is to balance "the constitutional prerogatives of each branch." The author concludes that the three investigations were unwarranted.

Tiefer, Charles. "The Law: President Bush's First Executive Privilege Claim: The FBI/Boston Investigation." *Presidential Studies Quarterly* 33 (2003): 201–10.

This is an interesting article that focuses on one instance of the invocation of executive privilege. In 1965 Joseph Salvati was convicted of a murder he did not commit and was not released until 1997. The real killers were instead protected by the Boston FBI as informers against Boston mobsters. The House Committee on Government Reform investigated the case in 2001 and requested material from the Department of Justice. President Bush asserted executive privilege and refused the request. The article traces the basis of the president's decision to refuse the request based upon a 1983 memorandum written by attorney Theodore Olsen. Tiefer attacks the substance of this memo, asserting that the president's reliance on it was misplaced and there was no basis for the assertion of executive privilege.

Valentine, Andrew J. "Congressional Investigation of Subversive Activities Where There is a Danger of State Prosecution." *The George Washington Law Review* 22 (1954): 729–41.

In this student note, the author argues that when national security is at issue, for instance when Congress is ferreting out Communists and other subversives, this must take precedence over the Fifth Amendment privilege against self-incrimination. To replace this constitutional right, the author advocates granting witnesses a "statutory amnesty" in exchange for their testimony and the relinquishing of their Fifth Amendment rights. The form of this amnesty is laid out in proposed legislation titled, "A Bill to Amend the Immunity Provision Relating to Testimony Given by Witnesses Before Either House of Congress or Their Committees."

### *Limitations*

Boudin, Louis B. "Congressional and Agency Investigations—Their Uses and Abuses." *Virginia Law Review* 35 (1949): 143–213.

In this article the author takes the position that the abuses of the investigatory system are in fact not abuses at all, but standard operating procedure well within

the law, and makes the observation that the abuses liberals were complaining about were abuses they themselves perpetrated in previous investigations. He traces the history of the “inquisitorial power” in the United States discussing the cases *Kilbourn v. Thompson* and *McGrain v. Daugherty*, as well as Fourteenth Amendment jurisprudence. He concludes by laying out the “[t]rue principles governing the inquisitorial powers of Congress” (p.205). These principles are 1) Congress has power over legislative matters only, 2) Congress has no judicial powers, 3) the legitimacy of the investigation is a judicial question, 4) Congress’s inquisitorial powers are no greater than those of the courts, 5) “The Right of Silence is not limited to the Fifth Amendment” (p.209), and 6) the Sixth Amendment has no application to congressional investigations. In the author’s opinion, since a witness in a congressional investigation is not being put on trial, he does not have the rights that a trial confers.

“Congress vs. the Courts: Limitations on Congressional Investigation.” *University of Chicago Law Review* 24 (1957): 740–51.

This comment discusses the role of the federal judiciary when a witness has refused to answer a question from a congressional investigating committee and has been cited for contempt. Special focus is placed on the policy arguments that underlie these types of cases.

Dolan, Joseph F. “Investigating Power of Congress: Its Scope and Limitations.” *Dicta* 31 (1954): 285–304.

A good overview of Congress’s power of investigation, addressing constitutional and separation of powers issues, written in “the midst of the turbulence and turmoil of political strife” (p.285) such committees were generating at the time.

Gage, Sanford M. “Constitutional Limitations Upon Congressional Investigations.” *UCLA Law Review* 5 (1958): 645–63.

Written in the context of *Watkins v. United States*, the author states that “[t]his case highlights the problem of the constitutional limitations upon congressional committees endowed with compulsory process which engage in essentially adversarial hearings” (p.645). The power of the committees stems from their ability to initiate contempt proceedings. Refusal to cooperate with a properly authorized committee can result in contempt. The author then spends the remainder of the article laying out the defenses available, i.e., those that defense witnesses can raise to avoid cooperating. These defenses include statutory requirements, lack of authority, lack of power, First, Fourth, and Fifth Amendment questions, and due process. The author concludes with suggestions for expanding the list of defenses that the courts could create, including expansion of First Amendment rights to privacy, or an enhanced right to remain silent, and due process protections expanded to require a fair trial requirement. The author concludes that present safeguards “seem adequate” (p.663).

Landis, James M. “Constitutional Limitations on Congressional Power of Investigation.” *Harvard Law Review* 40 (1926): 153–221.

The author here mentions a phrase unstated in the more recent literature: legislative power. By looking at the antecedents of American law, i.e., English case law and statutes, the author believes that since Parliament had the power to deal with insults to its “dignity,” Congress’s power to commit for contempt “lie[s] in the necessity of self-help and self-defense” (p.157). Throughout the piece he focuses

on how both the judicial and the legislative branches possess these powers. He refutes the argument that Congress cannot have these powers because Parliament was originally a judicial body. Landis then goes on to discuss Colonial-era legislatures, use of Parliamentary powers, which carried over after independence. A historically useful article.

Meader, George. "Limitations on Congressional Investigations." *Michigan Law Review* 47 (1949): 775–86.

This author takes the position that Congress has lost some of its power to the newly created "administrative state," and the best way to correct the imbalance in the separation of power is for Congress to enhance its investigative abilities. He also discusses legislation pending at the time the article was written.

Millikan, Kent B. "Limitations on the Congressional Power of Investigation." *William and Mary Law Review* 8 (1967): 630–60.

This note focuses on courts' views of the limitations put on congressional investigating committees, with special focus on the House Un-American Activities Committee. The limitations most often raised include: the investigation does not serve a legitimate purpose, the committee charter does not authorize type of investigation, the questions were not pertinent to the subject of the investigation, and the investigation violates the First Amendment.

"Purpose and Pertinency in Congressional Investigations." *Minnesota Law Review* 41 (1957): 622–38.

This note focuses on two issues: the limitation of congressional investigations which require that the investigation be conducted for a "legislative purpose," and the statutory punishment of a witness who refuses to answer pertinent questions.

Richardson, James R. "Investigating Power of Congress—Its Scope and Limitations." *Kentucky Law Journal* 44 (1956): 318–32.

This article provides a basic lesson in Congress's committee system including the types of committees, committee powers, and committee procedures for handling investigations. Given the atmosphere of the times, the article concludes on a positive note by endorsing the investigatory committee in that it molds "public opinion which shapes the law and thus provid[es] an additional guarantee for the continuance of our democratic form of government" (p.332).

Tunstall, Robert B. "Investigating Power of Congress: Its Scope and Limitations." *Virginia Law Review* 40 (1954): 875–97.

The author examines the scope and limitations of congressional investigations, and then goes on to discuss whether the power is too broad or narrow, and if change is necessary, and finally makes recommendations for change.

### *Attorney-Client Issues*

Ford, Patrick H. "The Lawyer and the Congressional Investigation." *Southern California Law Review* 21 (1948): 242–59.

The author, who represented General Short (of Pearl Harbor fame) before a congressional investigating committee, discusses the practical problems associated with the manner in which Congress performs its investigative function.

Rich, Jonathan P. "The Attorney-Client Privilege in Congressional Investigations." *Columbia Law Review* 88 (1988): 145–72.

This note takes the position that a witness appearing before Congress is entitled to invoke the common law attorney-client privilege.

Simon, William. "Role of the Lawyer in a Congressional Investigation—An Appraisal of the Forum." *The Business Lawyer* 13 (1958): 230–39.

This article is concerned with practical problems confronting counsel when dealing with a congressional investigation.

### *General*

Auchincloss, Kalah. "Congressional Investigations and the Role of Privilege." *American Criminal Law Review* 43 (2006): 165–98.

A more recent article than most of those in this bibliography, it covers familiar territory, analyzing the role privilege plays in congressional investigations, and comparing it to the role it plays in a standard trial. The author gives a history of congressional investigations, including specific investigations, and then covers three different types of privilege: attorney-client privilege, executive privilege, and the Fifth Amendment privilege against self-incrimination. The author's analysis shows that the privileges are treated differently in the two arenas, and how the adversarial nature of the two arenas affects the analysis. The attorney-client privilege has no constitutional basis, so Congress is free to ignore it. The Fifth Amendment is deeply rooted in the Constitution, so it must be recognized. Executive privilege is a derivative right, not explicit in the Constitution and thus the privilege involves a balancing between the two branches of government. The author concludes that each privilege must be examined on its own when asserted in a congressional investigation.

Barth, Alan. *Government by Investigation*. New York: Viking Press, 1955.

As with most of the literature in this field, this volume first lays out the history of congressional investigations within the context of our constitutional system and then the problems with such investigations (separation of powers, self-incrimination, etc.). Highlights include examinations of congressional investigations of the past (with excerpts from the transcripts of past investigations) which clearly show the historic nature of the problems with congressional investigations. The author diagnoses the underlying problem as a few politicians exploiting the process for their own purposes.

Bielitsky, Frank, and Oscar Spivack, "Congressional Investigating Committees and Television." *Temple Law Quarterly* 26 (1952): 70–76.

This is an interesting article written during the early years of television, when congressional committee investigations, especially Senator Kefauver's investigation of organized crime, were considered "good television." The author considers whether having television cameras rolling during an investigatory hearing, while permissible, is a good idea, because a hearing for legislative purposes (permissible) may lead to a criminal prosecution (impermissible). This article makes the excellent argument that when a witness is questioned by Congress he is simply being questioned, but when those same questions are asked before Congress and television cameras, he also runs the risk of being prosecuted.

Cahen, Donald M. "Congressional Investigations and the Privileges of Confidential Communications." *California Law Review* 45 (1957): 347–62.

This note argues that the right of confidential communication should be guaranteed by statute.

Carr, Thomas P. *Hearings in the U.S. Senate: A Guide for Preparation and Procedure*, CRS Congressional Research Services Report for Congress, Order No. RL30548, June 13, 2006.

Carr, Thomas P. *Hearings in the House of Representatives: A Guide for Preparation and Procedure*, Congressional Research Services Report for Congress, Order No. RL30539, June 13, 2006.

Carr, Thomas P. *House Committee Hearings: Preparation*, Congressional Research Services Report for Congress, Order No. 98-488 GOV, Mar. 1, 2006.

Carr, Thomas P. *Senate Committee Hearings: Preparation*, Congressional Research Services Report for Congress, Order No. 98-489 GOV, Mar. 13, 2006.

Carr, Thomas P. *Types of Committee Hearings*, Congressional Research Services Report for Congress, Order No. 98-317 GOV, Mar. 1, 2006.

Chase, Harold W. "Improving Congressional Investigations: A No-Progress Report." *Temple Law Review* 30 (1957): 126–55.

After citing abuses of the congressional investigating system, mostly focused on the investigations into communist subversion, the author goes on to note attempts by several parties (inside Congress and out) at reforming the process, few of which have had any impact. The author also discusses the purposes of congressional investigations, some legal and some not. He proposes some innovative changes, including boards of inquiry, to reach the legitimate goals.

"Congressional Investigations: Defamation Immunity." *University of Chicago Law Review* 18 (1951): 591–97.

This article explores the problem of suing members of a congressional committee for defamation. Witnesses seeking to sue have several hurdles to surmount before they can bring a cause of action: legislators have immunity from defamation for things they say while doing their duty, and newspapers that publish defamatory statements made during those hearings are nearly immune because they are merely reprinting matters discussed during legislative business. The author reminds us that newspapers do not have absolute immunity, and under certain instances, cases against them can be won.

Dillard, Irving. "Congressional Investigations: The Role of the Press." *University of Chicago Law Review* 18 (1951): 585–90.

The author of this essay, the editorial page editor of the *St. Louis Post-Dispatch*, explores, "the extent to which the press is responsible for the character of the congressional inquiry, including its procedure and tone as well as its purpose" (p. 586). The author goes on to accept some responsibility, in the name of the press, for the antics and abuses of the investigating committees because of how the press popularizes and exploits investigations for its own purposes. He argues that if the press acted better, helped elect better men, and kept the public informed about how those men were doing their job, then those better men would conduct better investigations.

Dimcock, Marshall E. *Congressional Investigating Committees*. Baltimore, Md.: Johns Hopkins Press, 1929.

While this book is clearly dated, it is useful for historic purposes as it was written prior to the 1950s, when the law in this area was explored and settled. The author selects his cases to make the point that Congress's investigatory power should be expanded; since the time this book was written he has gotten his wish.

Finer, Herman. "Congressional Investigations: The British System." *University of Chicago Law Review* 18 (1951): 521–70.

This article compares our congressional investigations with the Parliamentary investigations in England. Finer discusses, in detail, how the British Parliament handles investigations both inside and outside of Parliament. He concludes by discussing how the English system is superior because the members, when conducting investigations, do "not contend against citizens and residents as though they were enemies to be hunted down and macerated for public amusement and private advancement or the satisfaction of patent demagoguery and sadisms" (p. 569).

Forrester, Ray. "History and Function of Congressional Investigations." *Arkansas Law Review* 8 (1954): 352–59.

This is a reprint of a speech given by the dean of Tulane's law school on the basics of congressional investigations.

Fulbright, J.W. "Congressional Investigations: Significance for the Legislative Process." *University of Chicago Law Review* 18 (1951): 440–48.

This article, written by former Senator J. William Fulbright, lays out its theme early when he states, "[W]hatever else it may appear to be, a congressional investigation is primarily a search for information which it is believed is needed in order to solve a governmental problem" (p. 440). The author also equates any congressional fact-finding with an investigation. Fulbright defends the investigation as the eyes and ears of Congress and asserts that investigations, and the wisdom behind them, are the responsibility of individuals, not the institution of Congress, and that this is the source of most of the criticism. The character of any particular investigation is the result of both the governmental problem being investigated and the facts being investigated. In the second part of the article Fulbright analyzes the investigation of the Reconstruction Finance Corporation. This part works especially well as a framework on how to conduct an investigation.

Galloway, George B. "Congressional Investigations: Proposed Reforms." *University of Chicago Law Review* 18 (1951): 478–502.

In a straightforward manner the author lays out the present criticisms of the congressional investigation: 1) delays in getting started, 2) enmity between Congress and the executive branch hurt the fairness of the investigation, 3) "an unnecessary burden upon the time of the executive and have been a nuisance to the bureaus" (pp.479–80), 4) executive agencies escape punishment when the majority of the committee is sympathetic or the opposing party fears retribution. He also notes that complaints regarding the privacy of witnesses have increased since the 1940s. He suggests particular reforms in the following areas: 1) delegation of some types of investigations to outside agencies, 2) banning the creation of special investigating committees, 3) voluntary adoption of fair conduct codes, 4) mandatory stan-

dards of fair play imposed on committees by statute or standing rule. The balance of the article discusses these reforms in some depth, and includes a suggested code of conduct, as well as a chart comparing proposed reform codes.

Galloway, George B. "Investigative Function of Congress." *American Political Science Review* 21 (1927): 47–70.

This article gives a political science perspective on congressional investigations. The author analyzes the investigative power through history, the law, and the political motivations behind the investigations. He concludes that "the investigating committee has acquired a permanent, important, and salutary place in governmental practice" (p. 70). His analysis shows that by using the investigating committee Congress has been able to keep up with the expanding powers of the executive branch of government.

Gilligan, John W. "Congressional Investigations." *Journal of Criminal Law and Criminology* 41 (1951): 618–38.

The author acknowledges the coercive nature of congressional investigations in the form of contempt, and how that nature can lead to abuses of the process. The author traces the history from the colonial period up to the present. The article then proceeds to give a practical view of what goes on during an investigation, and what privileges a witness can assert, and winds up with advice on fighting a wrongful contempt conviction.

Glassie, Henry H., and Thomas M. Cooley, II. "Congressional Investigations—Salvation in Self-Regulation." *Georgetown Law Journal* 38 (1950): 343–67.

The authors begin by making an interesting point: the only hearings that give rise to judicial opinions and law review articles are those that involve "inquiries into the efficiency and honesty of the Executive branch," and "those primarily intended to influence or mould public opinion. They are only incidentally, and usually very remotely, connected with any legislation" (p.344). The authors are of the opinion that investigations are the only method of policing the executive branch, even when some investigations tend to cast Congress in a bad light. There is a discussion of the role of the press in bringing matters to light that leads to the creation of an investigating committee. The bulk of the article is taken up with the authors' theme of the need for committees to have rules to make the process run more smoothly, and to spare witnesses, and Congress itself, shame and embarrassment. Rules are needed regarding control of the press, issuance of reports and opinions, selection of committee staff, issuance of subpoenas, witness's rights to defend themselves and to reply. The article includes an appendix with a "Tentative draft of suggested committee rules."

Grabow, John C. *Congressional Investigations: Law and Practice*. Clifton, N.J.: Prentice Hall Law and Business, 1988.

Although this work has not been updated in some time, it remains valuable as a one-volume guide to practice in this very specialized area of law.

Hamilton, James. *The Power to Probe: A Study in Congressional Investigations*. New York: Vintage Books, 1976.

The author of this book served as the assistant chief counsel to the Senate's Select Committee on Presidential Activities during the Watergate investigation; Hamilton was responsible for investigating the break-in, cover-up, and all the

other related matters. Given the author's resumé, the book is a worthwhile examination of the investigative process. The book focuses on the Watergate investigation, including a discussion of the surrounding litigation. Hamilton also devotes several chapters to the nuts and bolts of an investigation, with chapter titles like, "The Congressional Tools," "Hearing Procedures and Individual Rights," and "Restrictions on Investigatory Powers," and discusses these within the context of the Watergate investigation. These are the chapters that provide helpful general information. The author's concentration on the Watergate investigation includes a discussion of the committee's many leaks. In conclusion, Hamilton notes the then-current investigation of the nation's intelligence agencies and the need for congressional oversight.

Hirschberg, D. Jeffrey, Marvin G. Pickholz, and Franklin Silbey. *Congressional Oversight Investigations*, New York: Practicing Law Institute, 1984.

In 1984 the Practicing Law Institute published a series of papers, brought together here, on the subject of representing a client before a congressional investigating committee. Given the publisher, the book is very practice-oriented, especially with papers titled, e.g., "Congressional oversight committees and Securities and Exchange Commission investigations," and "Safeguarding the client's rights in the oversight investigation." Like the Grabow book referenced above, this is very dated, but worth a look.

Hoffman, Walter F. "Legitimate Functions of a Congressional Investigation." *Rutgers Law Review* 9 (1955): 528-43.

This author concerns himself with an analysis of the investigating power in the context of the doctrines of the separation of powers and the limitation of powers not laid out in the Constitution. He acknowledges that the power to investigate is auxiliary to the power to legislate, and from there describes what powers Congress does and does not have. He then fits those powers (and lack thereof) into the framework of investigation as a part of legislating. The author suggests reforms and limitations on Congress's power, including limiting dealings with congressional committees only to department heads or their representatives and having the committee, from the outset, specify the legislative function involved so as to keep the committee's business within constitutional limitations. These suggestions are couched in a call to the bar associations to educate the public as to the function of investigating committees: what they are, and what they are not (i.e., courts or grand juries).

Kefauver, Estes, "Code of Conduct for Congressional Investigations." *Arkansas Law Review* 8 (1954): 369-79.

This is a reprint of a speech given by Tennessee Senator Kefauver on the need for establishing rules to guide the conduct of congressional investigations.

Lane, Gary. "Procedural Operations of Congressional Investigatory Committees." L.L.M. thesis, The George Washington University Law School, 1970.

This is an L.L.M. thesis by a George Washington University law student. Lane examines in great detail the workings of two particular committees: the Senate Internal Security Subcommittee (SISS) and the House Internal Security Committee (HISC). Both of these committees are charged with examining internal security (what used to be called "subversion"). While neither of these committees is still operating, the depth of analysis presented by Lane makes a good

model of future studies of particular committees. Although this item may be difficult to locate since it is a thesis, this is a valuable work due to the depth of analysis the author provides.

Leon, Richard J. "Congressional Investigations: Are Partisan Politics Undermining our Vital Institutions?" *Suffolk University Law Review* 31 (1998): 825–36.

This is a reprint of a speech given at Suffolk University Law School by an attorney who participated in the Iran-Contra hearings, the "October Surprise" hearings, and Whitewater. He notes that an investigation is not only a search for the truth, but also an exercise in power. The lesson he tries to impart is that while partisan advantage is part of an investigation, it should not be the goal.

Marx, Fritz Morstein. "Congressional Investigations: Significance for the Administrative Process." *University of Chicago Law Review* 18 (1951): 503–20.

While the author would like to have written a monograph on the "investigative method in its application to the executive branch" (p.503), he instead narrows the scope to three key issues: 1) the need for facts in governmental operation and how investigations meet that need, 2) how the investigative function works in relation to administrative responsibility, and 3) the operation of investigative power relative to legislative responsibility. The author, a political science professor, writes mostly about the interactions between legislative and executive branches, and their functions.

Maslow, Will. "Fair Procedure in Congressional Investigations: A Proposed Code." *Columbia Law Review* 54 (1954): 839–92.

After reviewing the abuses and criticism of contemporary congressional investigating committees, the author lays out his "Model Code" of procedure for these committees. He addresses objections to having a code, and to potential problems with his proposal. The article covers issues such as defamation, right to counsel, television and radio coverage, subpoenas, and compelling testimony. The appendix to the article contains the text of his model code.

McDonnell, James L. "Congressional Investigating Committees—Past, Present and to Come." *British Journal of Administration* 1 (1954): 20–29.

This article, appearing in a British journal, traces the development of the U.S. Congress's investigative powers in the context of their development in the English parliamentary system. McDonnell makes the interesting observation that the congressional investigating committee is the American version of British parliamentary "question time," although in reality that could only be true if the president were before the committee. The article also addresses current committee action (in the 1950s), argues that reform will come to committee procedures, but by necessity must come from within, and offers the English Tribunals of Inquiry (Evidence) Act of 1924 as a model.

McGeary, M. Nelson. "Congressional Investigations: Historical Development." *University of Chicago Law Review* 18 (1951): 425–39.

As the title would suggest, this article is a history of the development of congressional investigations. The article's theme is that over time congressional investigations have broadened the powers of Congress, and any powers Congress loses are eventually regained. After reviewing the history, the author notes that

only Congress really has the power to rein in investigations and urges Congress to show restraint.

McGeary, M. Nelson. "Congressional Power of Investigation." *Nebraska Law Review* 28 (1949): 516–29.

Written by a political science professor, this article traces the history of some famous investigations during the nineteenth century and analyzes the cases as they stood at the time of writing. He concludes by speculating on what the Supreme Court should do in regard to what he views as the abuses involved in the congressional investigation system.

McGeary, M. Nelson. *The Developments of Congressional Investigative Power*. New York: Octagon Books, 1966.

This book takes an in-depth look at committee investigations "conducted, in pursuance of a resolution or statute" (p.8), held between the 71st and the 75th Congresses. A look at the chapter titles gives a good flavor of the topics the author explores: "Purposes of Investigations," "Procedure," "Results," "Recent Decisions by the Courts," and "Concerning Future Methods." Although dated, the study is useful for historical purposes and provides a good explanation of how things were done at that time.

Meador, George. "Congressional Investigations: Importance of the Fact-Finding Process." *University of Chicago Law Review* 18 (1951): 449–54.

The author describes how Congress has lost its legislative role now that some legislation is being written by executive departments and presented to Congress for passage. For Congress to retain its legislative role it must be able to "originate and adopt national policies expressed in sufficient detail and in unambiguous terms, and which, in the judgement of the Congress, are in the best interest of the country" (p.450). To effectuate that goal Congress must strengthen its investigative powers and have the necessary will to do so. Larger staff is one way to make it possible. Members of Congress must serve their constituents, and not the president, even when they share the same party affiliation. Congressmen should also not fear bad publicity since, "if Congress properly presented its case to the public, efforts to place its action in an unfavorable light would fail" (p.453). The author's main point is that more congressional investigation and more uncovering of facts is a good thing for the country.

Moreland, Allen B. "Congressional Investigations and Private Persons." *Southern California Law Review* 40 (1967): 189–273.

The purpose of this article is to study the history of the development of Congress's power to punish for contempt and how this power has been created and used through legislation and judicial decisions. The article explores these issues only within the context of their effect on private persons, not on members of the other branches of government. This is a very detailed study of the issue of private citizens' rights before a congressional investigating committee.

Parker, Alan A. "Congressional Investigations." *Trial* (Feb. 1987): 15.

This article is a brief, one-page look at some of the investigating committees that have been created by Congress throughout history. The first was created in 1792 to investigate a military defeat at the hands of Indians on the Ohio frontier. The article includes the "Money Trust" investigation, the Truman Committee, Organized Crime, and McCarthy. This article provides an introduction to some of the more famous investigating committees in U.S. history.

Rogers, Lindsay. "Congressional Investigations: The Problem and Its Solution." *University of Chicago Law Review* 18 (1951): 464–77.

The author begins by describing in a roundabout way the problem of congressmen abusing the investigatory power by self-aggrandizement, making innocent people appear guilty, and creating guilt by association. As a solution, the writer proposes that Congress create rules for itself similar to those it created in the Administrative Procedures Act for regulatory agencies—most notably the separation of the investigation from the later decision. Committee members would act as judges, not "inquisitors," they would not cross-examine witnesses, but would ask clarifying questions. The actual interrogation would be handled by professional staff. It is almost as if the proposal were to have the legislators stick to legislating and appoint staff to hold the investigation. He goes on to hold up the procedures for investigations used in the State of New York and in Great Britain as positive examples.

Schlesinger, Arthur M., and Rogers Bruns, eds. *Congress Investigates: A Documented History, 1792–1974*. New York, Chelsea House Publishers, 1975.

This five-volume set gathers together documentary source material, both government reports and debates as well as nongovernmental material, in chronological order, to study how the congressional investigation has evolved over time. Each investigation is introduced by a lengthy essay giving background on the investigation as well as how the investigation played out. The set is not intended to be comprehensive, but includes only those investigations that demonstrate the growth of the congressional investigation and highlight key legal and constitutional problems.

Shampansky, Jay R. *Staff Depositions in Congressional Investigations*, Congressional Research Services Report for Congress, Order No. 95-949A, Dec. 3, 1999.

Shils, Edward A. "Congressional Investigations: The Legislator and His Environment." *University of Chicago Law Review* 18 (1951): 571–84.

The author states in the beginning of his article that he will not go into depth on the abuses of the investigating committee, but will "take as our task the exploration of factors which may assist in understanding some of these peculiarities and excesses of congressional investigations" (p.571). A professor of social science, he blames the "conditions of life of the American legislator" (p.571), for their bad behavior. The author goes into a great deal of detail about the legislator's life and comes to the conclusion that congressmen grandstand at hearings as well as sometimes abuse and harass witnesses because they are under a great deal of stress.

Taylor, Telford. *Grand Inquest: The Story of Congressional Investigations*. New York: Simon and Schuster, 1995.

The author is famous as a prosecutor during the Nuremburg trials, and wrote this book in response to the "loyalty investigations." Taylor is critical of these investigations, pointing out that they are not investigations at all, but are done more for publicity, since they have no connection with the gaining of information for legislative purposes, and little connection to oversight of the executive branch.

As further criticism, Taylor traces the history of congressional investigations and lays out the constitutional limitations they labor under. Taylor also touches on congressional investigating procedures. While Taylor does offer some recommendations for improving the process, the real thrust of the book is that investigations work well when they are used for their intended purposes, and fail when they are used to go after individuals and assess blame.

“Television and Congressional Investigations.” *DePaul Law Review* 1 (1951): 112–20.

This is another article about televised hearings written in the wake of the Kefauver hearings. The author notes the arguments in favor of television (open hearings), but argues that the rationale behind open hearings (avoidance of “star chamber” proceedings) does not mesh with the presence of cameras. Another argument in support of cameras is to inform the public of the necessity of new legislation. The author shoots down this argument by saying that hearings are intended to assist lawmakers in making objective legislative decisions, and television is no help in securing this type of information. The author persuasively argues that when television cameras are present, a congressional hearing becomes more like a judicial proceeding—without the constitutional protections.

Van Alstyne, Arvo. “Congressional Investigations.” *Federal Rules Decisions* 15 (1954): 471–83.

The author provides a vigorous and well reasoned defense of the necessity for Congress having investigatory power based on its need for information without having to rely on the executive branch, and as part of its oversight duties vis-à-vis the executive branch.

Voorhis, Jerry. “Congressional Investigations: Inner Workings.” *University of Chicago Law Review* 18 (1951): 455–63.

The author, a former congressman and member of the House Un-American Activities Committee, is in favor of more investigations to determine the need for new legislation, and to examine activities that, while not illegal, still need to be examined. The article discusses investigations in depth, especially how investigations are begun and conducted. As an example, he uses the House Un-American Activities Committee. This article is an interesting view on how investigations work from the inside, but is short on detail.

Warren, William C. “Congressional Investigations: Some Observations.” *Food Drug Cosmetic Law Journal* 21 (1966): 40–51.

This article contains a good history of congressional investigations going back to England, lays out good critiques of the procedure, and gives some solutions. It also compares how the same process is accomplished in England.