CONGRESSIONAL OVERSIGHT

Oversight is an implied rather than an enumerated power under the U.S. Constitution. The government's charter does not explicitly grant Congress the authority to conduct inquiries or investigations of the executive, to have access to records or materials held by the executive, or to issue subpoenas for documents or testimony from the executive.

There was little discussion of the power to oversee, review, or investigate executive activity at the Constitutional Convention of 1787 or later in the Federalist Papers, which argued in favor of ratification of the Constitution. The lack of debate was because oversight and its attendant authority were seen as an inherent power of representative assemblies which enacted public law. Historian Arthur M. Schlesinger, Jr., has noted that "no provision in the American Constitution gave Congress express authority to conduct investigations and compel testimony." He added, "but it was not considered necessary to make an explicit grant of such authority. The power to make laws implied the power to see whether they were faithfully executed. The right to secure needed information had long been deemed by both the British Parliament and the colonial assemblies as a necessary and appropriate attribute of the people to legislate."16

Oversight also derives from the many and varied express powers of the Congress in the Constitution. It is implied in the legislature's authority, among other powers and duties, to appropriate funds, enact laws, raise and support armies, provide for a Navy, declare war, and impeach and remove from office the President, Vice President, and other civil officers. Congress could not reasonably or responsibly exercise these powers without knowing what the executive was doing; how programs were being administered, by whom, and at what cost; and whether officials were obeying the law and complying with legislative intent.

The Supreme Court made legitimate the oversight powers of Congress, subject to constitutional safeguards for civil liberties, on several occasions. In 1927, for instance, the High Court found that in investigating the administration of the Justice Department, Congress was considering a subject "on which legislation could be had or would be materially aided by the information which the investigation was calculated to elicit."18

FOOTNOTES

17 U.S. Constitution, Article I, Section 8 and Article II, Sections 2 and 4.

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