Protection of Witnesses Before Congressional Committees

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Congress, almost from the beginning, has exercised its right to investigate. It was Woodrow Wilson who described the “informing” function of Congress as more important than its legislative function. Although nowhere does the Constitution grant to Congress an explicit right to investigate, the power has been found as an “inherent right” in Congress to carry out its law-making function. The incidence of congressional investigations has varied throughout United States history; three examples of heightened activity are the loyalty security investigations of the 1950s and more recently the Watergate probe into activities surrounding the 1972 presidential campaign and inquiry into activities of United States intelligence agencies.

Aside from the substance of inquiry, one of the most serious and controversial issues associated with congressional investigations has been the subject of the rights of witnesses. Congressional investigating committees are not courts of law, of course, but when they engage in the examination of witnesses the proceedings may have serious consequences for those questioned. This study will focus on proposals to protect the rights of witnesses and will examine the practices of the following congressional committees in protecting the rights of witnesses: the Senate Select Committee on Presidential Campaign Activities (Watergate), the Senate Permanent Subcommittee on Investigations of the Committee on Government Operations (formerly the “McCarthy Committee” in the 1950s), the Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities, and the House Select Committee on Intelligence.

Many proposals for reform have focused on the alleged need to increase the number and scope of the rules shielding witnesses from mistreatment by investigating committees. A word of caution should be expressed, however, against dependence entirely upon rules to provide the safeguards. One writer has argued that no matter how worthy the promulgation of rules may be, their imposition may be like advocating that we treat the symptoms of the disease rather than the disease itself. The major problem, he insists, has occurred

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1 The first congressional investigation was in 1972 by the House of Representatives into the defeat of General Arthur St. Clair’s American troops by Indians in the Ohio territory.
2 W. Wilson, Congressional Government 303 (1885).
3 S. Friedelbaum, Contemporary Constitutional Law 332 (1972).
when committees have strayed from their legitimate purposes. In a similar view, George Galloway, writing in 1951 when he was Senior Specialist in American government in the Library of Congress, suggested that fairness for witnesses could not be assured by judicial decisions, statutes, or procedural rules. Any solution to the problem would depend on a sense of responsibility on the part of investigators and an aroused public opinion serving as a check on abuses by the committee itself. It is interesting to note that his comments were made just prior to the well-publicized investigations of the McCarthy era.

A strong argument can be made, however, that some rules, whether imposed by Congress, adopted voluntarily by committees, or established by act of Congress, are necessary to protect the rights of witnesses. There may well be some limit, on the other hand, to the number of rules that can be effective in protecting these rights. The late Senator Estes Kefauver proposed a relatively short list of rules which required, among other things, that timely written notice of meetings be given, that the subject and scope of committee hearings be made clear, and that persons injured by accusations be given the right of effective rebuttal. Committee rules adopted subsequently to his recommendations have characteristically included the above mentioned protections.

Telford Taylor, in his book The Grand Inquest, written just after the conclusion of the Senate McCarthy hearings, noted that witnesses at that time had almost no rules for their protection. A witness had "no guide other than what he can learn regarding the committee's current attitudes and practices." Nevertheless, Taylor's list of rules would be limited to the following, which he believed would be simple and easy to enforce. The witnesses should have 1) the right to counsel, 2) reasonable notice for his appearance before the committee and statement by the committee as to the subjects on which he will be questioned, 3) the right to make a statement, and 4) the privilege to have access to the record of his testimony. Taylor was skeptical of attempts at reform beyond the adoption of these few basic changes.

Although the central focus of this article will be upon the need for effective procedural rules for congressional investigating committees, it should not overlook the contribution the courts have made in establishing restrictions on these committees and strengthening the protection afforded witnesses. The courts have intervened with varying frequency over time into the activity of investigating committees; at times they have appeared lenient and at other times more stringent. The courts have emphasized the importance of protecting the rights of witnesses, and their decisions have provided a framework for establishing and enforcing effective procedural rules.

8 Id. at 254.
times strict. Nevertheless, some basic rules and limitations have emerged.

The Federal Courts and Congressional Investigations

Very early, the United States Supreme Court, in an effort to protect witnesses and to prevent inquiries which seek to conduct "fishing" expeditions has required that authorizing resolutions of congressional committees indicate a legislative purpose and that there be an explicit delegation of authority from the house to the committees to investigate specific subject matter. In *Kilbourn v. Thompson*\(^9\) the Supreme Court overturned a conviction for contempt of a witness who refused to answer questions before an investigating committee of the House of Representatives. The Court held that the House had exceeded its powers by empowering one of its committees to make the investigation. Part of the Court's objection was on the grounds of a violation of the separation of powers doctrine; the proceedings were being handled by the federal courts and the committee was usurping judicial power. In addition, the Court ruled that Congress could not inquire into the completely personal affairs of individuals. Investigations must relate to some valid legislative purpose.

However, the Court retreated somewhat when in *In re Chapman*\(^10\) it established a presumption in favor of a valid legislative purpose on the part of Congress. The Court ruled that it was not necessary for the Senate to say in advance what legislation it proposed to enact.

In *Sinclair v. United States*,\(^11\) a case growing out of the Teapot Dome inquiry, the Court upheld the right of the Senate to hold the witness in contempt for refusal to disclose certain information because allegedly it related to his private affairs and, in any event, pertained to matters before the courts. The committee was justified in compelling this testimony in exercise of its legislative powers and it had the right to conduct the investigation even though information sought might be used by the courts.

In the period between this case and *Watkins v. United States*,\(^12\) there was little interference by the Supreme Court in the activities of investigating committees.\(^13\) This was particularly true with respect to investigations by the

\(^9\) 103 U.S. 168 (1881).
\(^10\) 166 U.S. 661 (1897).
\(^11\) 279 U.S. 263 (1929).
\(^12\) 354 U.S. 178 (1957).

\(^13\) There were a few notable exceptions. Among them was *United States v. Rumely*, 345 U.S. 41 (1953). One question was whether the information sought went beyond the scope of the authorizing resolution creating the House Select Committee on Lobbying Activities, empowering it to investigate, among other matters, "all lobbying activities, intended to influence, encourage, promote, or retard legislation." At issue was the refusal by Rumely to disclose the names of certain persons purchasing books of a political nature published by an organization whose secretary was Rumely. The Court avoided constitutional questions but reversed the conviction for contempt on the ground that the information sought was outside the scope of the authorizing resolution.
House Un-American Activities Committee in the 1940s and the 1950s and by the Senate Permanent Subcommittee on Investigations of the Committee on Government Operations, then termed the McCarthy Committee. A change occurred in 1957.

John T. Watkins, a labor union organizer, appeared as a witness before a subcommittee of the House Un-American Activities Committee. He was willing to answer questions about his relationship with the Communist Party as well as questions about persons currently members of the Communist Party but refused to answer questions about those persons he believed had left the Party on the grounds that these questions were not germane to the work of the committee. He was convicted of contempt of Congress under a statute which made it a criminal offense to refuse to answer “any question pertinent to the question under inquiry.” The Supreme Court sustained his refusal to answer the questions on the ground that they were not pertinent to the inquiry. The Court overturned his conviction as a violation of Due Process under the Fifth Amendment to the Constitution. There was no opportunity for the witness to judge whether he could afford not to answer because of the failure of the authorizing resolution and remarks by the committee chairman and other members of the committee to provide any satisfactory guide.

Although the Court did not base its holding on First Amendment grounds, it did, by way of dicta, indicate that First Amendment rights might be invoked and suggested that the Bill of Rights applies to congressional investigations. The Court stated that “there is no congressional power to expose for the sake of exposure.”

The Court has also protected witnesses by insisting that committees adhere to the rules which they have adopted. A case in point is *Yellin v. United States*. The House Un-American Activities Committee was investigating alleged Communist infiltration in the steel industry. Having information that Yellin was a Communist, the committee decided to call him and question him in public, rather than in executive session. (Yellin’s attorney insisted that questioning be in executive session.) The staff director, contrary to his power under the rules of the committee, denied, on his own authority, Yellin’s request. The Court decided that the witness was entitled to have the committee follow its own rules of procedure, and since the committee had failed to do so it reversed his conviction.

Recently, the Court has appeared more reluctant to intervene in support of the witness. In *Eastland v. United States Servicemen’s Fund* the Court sustained a committee’s subpoena powers under the Speech or Debate Clause of the Constitution in the face of an alleged violation of the witness’ First Amendment rights.

17 421 U.S. 491 (1975).
Analysis of Committee Rules and Practices Before Certain Committees

Although intervention by the courts has been important, the rules established by Congress for its investigating committees and the rules adopted by the individual committees have been a crucial element in protecting rights of witnesses. Rule XI 2(a) of the House of Representatives required that each standing committee of the House adopt written rules which shall be published in the Congressional Record. 18 Committee hearings must be open to the public unless there is a vote within the committee, in open session with a quorum present, to close them. 19 Each committee (except the Rules Committee) must make public announcement of the date, place, and subject matter of the committee’s investigation one week prior to the commencement of the hearing unless the committee deems it necessary to start earlier. 20 So far as practicable each committee must require each witness to file with the committee, prior to the witness’ appearance, a written copy of what he proposes to say. 21 Committees are required, for the purpose of taking testimony, to establish a quorum not to be less than two members. 22

The Chairman must state, at the beginning of the hearing, the topic of the inquiry and a copy of the committee rules must be made available to the witness. The witness has the right to counsel. If the committee believes that evidence to be received tends to “defame, degrade, or incriminate” a person it shall take testimony in closed session, permit that person to appear, and receive requests to subpoena additional witnesses. The committee shall make available to the witness a transcript of his testimony at public session, and in private session when authorized by the committee. 23

The House Select Committee on Intelligence in its rules, adopted May, 1975, accepted the House Rules except as otherwise provided in its own rules. 24 The Select Committee conformed to the minimal requirement for a quorum when it provided that a quorum for taking testimony and receiving evidence shall consist of two members. 25 Provisions with respect to closed and open committee meetings agreed essentially with the provisions in House Rule XI. The Select Committee’s rules specifically prohibited direct and cross-examination by witness’ counsel although no specific prohibition is contained in House Rule XI. 26 All members of the Select Committee had five minutes each to interrogate witnesses until all had done so, and thereafter, additional time at the discretion of the Chairman. 27 Thus, all members of the

19 Rule XI 2 (g) (2).
20 Rule XI 2 (g) (3).
21 Rule XI 2 (g) (4).
22 Rule XI 2 (h).
23 Rule XI 2 (k).
24 Rule 1, House Select Committee on Intelligence (Adopted May 21, 1975).
25 Rule 2(5).
26 Rule 4(1).
27 Rule 4(8).
committee, majority as well as minority, had the opportunity to question, allowing presumably varying viewpoints to be presented in the questioning and perhaps assuring that witnesses will have "friendly" as well as "adverse" questioning. Supplemental views of individual committee members, in addition to the final report of the committee, could be filed.\(^{28}\)

Representative Otis G. Pike, Chairman of the House Select Committee, described the rights of witnesses as being well protected during the hearings.\(^{29}\) Staff members could take testimony in executive session but this testimony could not be placed in the committee's record unless the full committee voted to have it included therein. Witnesses were allowed to ask questions themselves although this practice was not provided for in the committee rules. There was no swearing of witnesses although any depositions were taken under oath. An attempt was made to keep the hearings public as much as possible. Media coverage of committee hearings in public session was permitted; however, if a witness objected to the presence of television cameras, his interrogation was held in executive session at his request. No witness was prosecuted for contempt since no citation for contempt was approved by the full House.\(^{30}\) The example of this committee demonstrates that a great deal depends upon the attitudes of the committee chairman and a desire to treat witnesses fairly.

Senate standing, select, or special committees are governed by certain rules, most of them contained in Title 2 of the United States Code, Sections 190-194. The committees must publicly state the date, location, and subject matter of any hearing one week in advance unless the committee decides there is reason to begin the hearing earlier.\(^{31}\) Meetings of all committees, except Appropriations, must be open to the public unless the testimony involves national security matters, adversely affect the character or reputation of an individual or may disclose confidential information protected by law.\(^{32}\) A witness is required to file in writing a statement of proposed testimony at least one day prior to his testimony unless waived by the committee.\(^{33}\) No witness can refuse to testify on the grounds that he will be disgraced before the committee.\(^{34}\) A refusal to testify or answer a question pertinent to the hearing will make the witness guilty of a misdemeanor.\(^{35}\) Finally, each committee

\(^{28}\) Rule 8(1).

\(^{29}\) Interview with Representative Otis G. Pike (NY) in Washington, D.C., March 25, 1976.

\(^{30}\) Under an act of Congress, originally passed in 1857, 18 U.S.C. #401 (1958), the committee must recommend to the parent body which must vote the contempt citation. It is then sent to the United States district attorney who presents the matter to a federal grand jury. If an indictment is forthcoming it is tried in a federal district court and then may be appealed up to the Supreme Court. See C. Pritchett, *The American Constitution* 217 (2d ed., 1968).


\(^{32}\) 2 U.S.C. 190a-1(b) (1970).

\(^{33}\) 2 U.S.C. 190a-1(c) (1970).

\(^{34}\) 2 U.S.C. 193 (1938).

\(^{35}\) 2 U.S.C. 192 (1938).
must adopt rules consistent with the Standing Rules of the Senate and publish them in the *Congressional Record*. 36

A standing committee of the Senate, with perhaps the broadest mandate for investigation, is the Senate Permanent Subcommittee on Investigations of the Committee on Government Operations. Among other matters, the subcommittee is empowered to investigate the “efficiency and economy of operations of all branches of the Government.” 37 Criminal or improper activities in the field of labor-management relations, 38 the energy problem, 39 and intergovernmental relations between the United States, state, and local governments. 40

The rules of the Senate Permanent Subcommittee on Investigations are fairly detailed and specific. Subpoenas for the attendance of witnesses and the production of material may be issued by the subcommittee chairman or any member of the committee designated by him. 41 For administering oaths to witnesses and the taking of testimony, one member of the subcommittee, with permission of the chairman and the ranking minority member, can constitute a quorum. 42 This contrasts with Rule XI (2) (h) of the House of Representatives which requires a minimum of two members for receiving evidence and taking testimony. 43

One possible criticism of the rules of this subcommittee is the fact that the chairman of the subcommittee can issue subpoenas without polling the entire committee. Minority counsel for the committee has been particularly desirous of having an agreement that the minority be consulted before issuance. Senator Charles H. Percy (Ill.), ranking minority member, secured a commitment by letter from Senator Henry M. Jackson (Wash.) of the majority, that the ranking minority member would be consulted before issuance of subpoenas. 44 This requirement of greater consensus by committee members seems to be a reasonable prerequisite which should militate against a large number of subpoenas directed at witnesses.

The Senate Select Committee on Presidential Campaign Activities (Watergate) was established under Senate Resolution 60. 45 Among other things, the resolution permitted the committee to issue subpoenas through its chairman or anyone designated by him. 46 For the purposes of taking testimony, the

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38 Sec. 4(a) (2).
39 Sec. 4(a) (7).
40 Sec. 5.
42 Rule 5.
46 Sec. 3(b).
committee might set a quorum of less than a majority of the members and the committee could hold hearings at any time or place determined by it. The resolution permitted the committee to adopt its own rules of procedure.

The rules adopted by the committee were the most detailed of any of the congressional investigation committees to date. These rules provided that subpoenas of witnesses would occur at a "reasonably sufficient time" prior to the hearing. All witnesses must be furnished a copy of the committee rules. Questioning of witnesses was limited to committee members or authorized staff members. In addition, a witness had the right to counsel who could request the testimony of other witnesses or the introduction of other evidence. Although there was no right of direct or cross-examination by witness counsel, counsel might prepare in writing questions to be asked of a witness. Also, any person subject to investigation in public hearing might submit in writing to the committee chairman questions for cross-examination.

Any person who believed that testimony would adversely affect his reputation could request to appear personally before the committee or file a sworn statement relevant to the adverse testimony. No testimony in executive session was to be made available to any other person except committee members and staff. Any evidence in executive session which the committee decided might "defame, degrade, or incriminate a person" would not be introduced in public hearing unless that person was given an opportunity to rebut it. A witness had the right to see any transcript of his testimony prior to its release. Finally, any witness might request, on the grounds of harassment or physical discomfort, that no camera be directed at him during public session.

Perhaps the most important failure to protect witnesses during the Watergate hearing was the problem of leaks. Several persons who were involved in

47 Secs. 1(d) and 3(a) (2). Rule XXV 5(b) of the Standing Rules of the Senate provides that each standing committee or subcommittee thereof can set a number less than one third of its membership for taking sworn testimony.
48 Sec. 1(c).
49 Rules of Procedure for the Senate Select Committee on Presidential Campaign Activities (Adopted April 1973), Rule 11.
50 Rule 13.
51 Rule 15.
52 Rules 19 and 22.
53 Rule 24.
54 Rule 25.
55 Rule 28.
56 Rule 29.
57 Rule 30.
58 Rule 31.
59 Rule 35.
the investigation confirmed this. There appeared to be a selective leaking of information which became widespread. Allegedly, many of the records subpoenaed by the committee went beyond the mandate of the committee. There was a tendency to become blinded to the rights of witnesses. A witness did not have the right to review the final report of the committee before release. However, on the positive side there were practices which protected witnesses by going beyond the technical requirements of the committee rules. There was no effort by the committee to have a witness who, previously having claimed the Fifth Amendment right against self-incrimination in executive sessions, to claim it again in public session. This contrasted sharply with the practice of the McCarthy committee in the 1950s. Also, the Watergate committee made testimony in executive session available at the committee’s expense even though not provided in the rules. The rules of the Watergate committee have been described as affording witnesses greater protection than the rules of other committees.

A recently concluded investigation was that of the Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities. The rules of this committee resemble the rules of the other committees previously discussed.

A special problem posed by this committee’s investigation was that of the identification of intelligence agency employees and their missions and the possible danger posed to them. In one instance a name that would have been included in the “Assassination Report” was removed from the document after a court suit was filed, but a Washington newspaper secured the name and reported it anyway. Another problem during the investigation was the question of deciding when it was incumbent on the committee to warn a witness with respect to claiming the Fifth Amendment protection against incrimination.

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60 Interview with Mr. Eiler C. Ravnholt, Administrative Assistant to U.S. Senator Daniel K. Inouye in Washington, D.C., March 24, 1976; interview with Mr. Terry Lenzner, formerly Assistant Chief Counsel, Senate Select Committee on Presidential Campaign Activities, in Washington, D.C., March 31, 1976.
61 See F. Thompson, At That Point in Time 55 (1975).
62 Interview with Mr. Michael Madigan, formerly Assistant Minority Counsel, Senate Select Committee on Presidential Campaign Activities, in Washington, D.C., March 30, 1976.
63 Interview with Mr. Terry Lenzner, March 31, 1976.
64 Interview with Mr. Eiler C. Ravnholt, March 24, 1976.
65 Interview with Mr. Terry Lenzner, March 31, 1976.
66 Interview with Arthur S. Miller, Professor of Law, National Law Center, George Washington University; formerly Chief Consultant, Senate Select Committee on Presidential Campaign Activities, in Washington, D.C. March 23, 1976.
67 Rules of Procedure for the Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities (As amended, September 22, 1975).
68 Interview with Mr. Michael Madigan, Counsel, Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities, in Washington, D.C., March 30, 1976.
Minimal Standards for Committees of Congress

Since the rules of procedure applicable to committees of Congress are not to be found in a single source but are contained in certain judicial decisions, in standing rules of Congress, in rules adopted by individual committees, and in federal statutes, a strong argument can be made that certain minimal rules should be established by law applicable to all congressional investigations. The House, under Rule XI, has provided a set of rules applicable to House Committees and the Senate has certain rules set forth in its Standing Rules and in Title 2 of the United States Code. There should be a law which would establish minimal rules applicable to both Senate and House. This law should include the following guarantees: 1) each committee must make public announcement of the date, place, and subject matter of the investigation at least one week prior to the commencement of the hearing; 2) each witness shall be served a copy of the resolution or statute establishing the committee and be provided a set of the committee rules prior to the hearing; 3) he shall have the right to make a statement at the beginning and conclusion of his testimony; 4) he shall have the right to counsel and the committee shall make an effort to furnish him counsel if he is unable to do so; 5) witness’ counsel shall have the opportunity to submit in writing questions to be asked of other witnesses; 6) subpoenas for the appearance of witnesses can be made only by majority vote of the entire committee; 7) a person not initially present at the hearing must have the opportunity to appear or file a written sworn statement in rebuttal to any adverse statement made about him; 8) secrecy of testimony in executive session must be preserved; 9) individual committee members can review the final report and issue their own report if they disagree with it; 10) committees must adopt rules and publish them in the Congressional Record within thirty days after their adoption.

Many of these rules, applicable to their respective committees, have been adopted by the House and Senate, have been adopted by congressional committees themselves, or have been embodied in applicable law. In order to promote consistency and assure minimal guarantees for all witnesses, how-

69 See Council of State Governments, Legislative Investigations: A Survey and Recommendations (1968). This study proposes a Model Code of Fair Procedures which includes the following rules: 1) Adequate notice shall be given witnesses; 2) service of subpoenas must be at least one week in advance of the hearing; 3) the person subpoenaed shall be served a copy of the resolution or statute establishing the committee, be provided a statement informing him of the subject matter of the investigation, and be furnished a copy of the rules under which the committee operates; 4) he may have counsel of his own choosing who, in addition to advising the witness of his rights, may submit to the committee proposed questions to be asked relevant to matters on which the witness may be questioned. In addition the witness may propound questions on his own. At 23-24. However, this last named right might prove chaotic in the hearing and the author of this article doubts that the right should be included. Certainly, if the committee is willing to secure counsel for a witness unable to secure one for himself, his rights will be adequately protected.

70 Mr. Robert Sloan, Counsel, Senate Permanent Subcommittee on Investigations, argued strongly for greater input by the minority into the final report or as an alternative, the right to file a separate report. Interview, March 23, 1976.
ever, a strong argument can be made for Congress to pass a law, applicable to all congressional committees, incorporating these basic rules.

Additionally, it is recommended that the “Office of Legislative Hearing Examiner” be created.\textsuperscript{71} This would assure a more expert approach to the questioning of witnesses. It would relieve Congressmen of the heavy responsibility they now have for conducting the hearings in a fair and expeditious manner. The “Legislative Hearing Examiner” would have a thorough knowledge of the rules applicable to the hearing and by training he would be better equipped to perform his duties than individual Congressmen. He would be a lawyer. The office would be analogous to that of the Administrative Law Judge in the administrative agencies who hears testimony and makes decisions. Not only would the creation of this office assure more equitable treatment of witnesses, but it would also enable Congress to carry out its investigative function more efficiently. The “Legislative Hearing Examiner” should also possess a well trained staff to assist him in performing his duties.

Another improvement would be the creation of a body in Congress to hear complaints of the violation of committee rules. Since the courts are reluctant to intervene in committee proceedings, this would go a long way toward affording protection to witnesses whose rights might have been abused. In addition, Congress should consider passing a law that would permit a witness who had been falsely accused in a proceeding to institute a civil suit in federal court to secure damages against the witness who falsely testifies. This would provide a strong incentive for witnesses to be truthful in the testimony they give.

Although the rules established for the protection of a witness and the adherence to them by the committee are important safeguards for the rights of a witness, it is still incumbent on counsel for the witness to make good use of the rules. In addition, the committee chairman and committee members have a responsibility to assure that staff members, in the excitement of the investigation, are not blinded to the rights of witnesses.\textsuperscript{72} In the final analysis a great deal depends on the sense of fairness of all concerned, particularly the committee chairman, but also committee members, the staffs of committees and the news media.

\textsuperscript{71} See Miller, “Implications of Watergate: Some Proposals for Cutting the Presidency Down to Size,” 2 Hast.L.Rev. 33 (1975). Professor Arthur S. Miller directs his attention specifically to the problem of Congress in checking the executive branch of government but his comments are equally applicable to other investigatory functions of Congress. He proposes the establishment of the office of “legislative hearing examiner” because, as he argues, no “single member of Congress is expected to be knowledgeable on matters covering the entire executive branch (as well as outside it) . . .” At 62.

\textsuperscript{72} Mr. Michael Madigan stressed that attorneys for witnesses must be alert to their clients’ rights and believed that in the Watergate investigation there was a tendency of junior staff members in the excitement of the investigation, to encroach on the rights of witnesses. Interview, March 30, 1976.
Conclusion

This article has reviewed proposals for improving the rights of witnesses before committees of Congress; it has studied the role of the Supreme Court in protecting these rights. In addition, it has examined the rules of four committees of Congress relating to rights of witnesses and has proposed a set of rules to be embodied in federal law, applicable to all committees of Congress. These rules embody guarantees that will alleviate the need for intervention by the courts. In the first place, the courts are reluctant to intervene; secondly, court proceedings are time-consuming and costly. Relieving the courts of the burden of protecting witnesses will also enable the committees to perform their tasks more efficiently and will bolster protection afforded witnesses.

Should Congress enact the list of rules proposed in this article, they could be modified in light of the experience of future committees as they conduct investigations. Congress and its committees in carrying out the investigative function have come a long way in protecting witnesses’ rights; uniform rules will further aid the process.

73 These rules are intended to be minimal ones and should not detract from flexibility on the part of committees of Congress which might want to adopt additional rules to fit the particular circumstances of the investigation.