

ONE

Introducing the Search for Answers

This book is about the 100 most significant investigations of government between 1945 and 2012. All of the investigations were designed to fix a breakdown in a government performance.

In an ideal investigatory world, all 100 investigations would have asked every possible question, assessed every possible answer, and fixed the breakdown once and for all. But in the real world covered by this book, one group of investigations asked most of the questions, assessed the available answers, and mostly fixed the breakdown, while a second group muddled through to minimal effect. This book is designed to explain the differences.

Every decade provided legendary investigations to the 100: Pearl Harbor and communists in government during the 1940s, and continuing with quiz shows and Sputnik in the 1950s, crime rates and the Vietnam War in the 1960s, Watergate and domestic spying in the 1970s, Social Security and the shuttle *Challenger* in the 1980s, Clinton misconduct and early warning about terrorism in the 1990s, and the Iraq War and financial meltdown in the 2000s.

Every decade also contributed forgotten or less visible investigations: commodity speculation and government reorganization in the 1940s, airport safety and drug prices in the 1950s, White House news management and defense stockpiling in the 1960s, welfare fraud and the General Services Administration in the 1970s, Indian affairs and government mismanagement in the 1980s, Ruby Ridge and Y2K in the 1990s, and mine safety and the Solyndra loan in the 2000s.

But whether legendary or forgotten, all 100 investigations were historically significant. Their ultimate success in fixing the breakdown had varied, but their historical significance at the top of the investigatory record between 1945 and 2012 did not. Significance was never a measure of investigatory weight or impact, but how history was served—and that is what placed them at the very top of the investigatory pile.

Just because all 100 were historically significant does not mean they operated in the same way. They addressed different breakdowns, reacted to separate triggers, took diverse institutional homes, moved forward from different venues such as committeees, subcommittees, or commissions, targeted different issues, adopted different purposes, and used various methodologies. They also searched for answers about problems created by past decisions to act, as well as past decisions not to act.

As such, the post–World War II investigatory agenda reflects the two faces of power described by Peter Bachrach and Morton S. Baratz in 1962. There are times when the “mobilization of bias” supports decisions to act, some of which set the stage for future government breakdowns. There are also times when this mobilization of bias leads to “nondecisions” that reinforce the status quo by preventing action on pressing issues. As Bachrach and Baratz show, “Power is exercised when A participates in the making of decisions that affect B. But power is also exercised when A devotes his energies to creating or reinforcing social and political values and institutional practices that limit the scope of the political process to public consideration of only those issues which are comparatively innocuous to A.”¹

This second face of power results in nondecisions that can eventually lead to a large-scale investigation. This was clearly the case with the 1965 traffic safety investigation, where the automobile industry and its allies in Congress and the presidency had successfully suppressed action for decades, just as the tobacco industry would suppress action until the 1993 tobacco investigation began reversing the course of policy. Both investigations were clearly designed to change nondecisions to decisions.

A DISTINCTION WITH A DIFFERENCE

At first glance, the 100 investigations examined here resemble the more traditional inquiries launched every day by congressional committeees, obscure presidential task forces, public interest groups, the media, and a host of quasi-independent monitoring agencies such as the federal Offices of Inspectors General and Government Accountability Office.

After all, these investigations used many of the same tools in the same search for answers about the same kinds of breakdowns. They held hearings, presented opening statements and calls to order, questioned witnesses, collected documents, searched for patterns of fact, assigned blame, and almost always produced lengthy reports. Although some of my investigations also produced draft legislation, issued subpoenas, filed contempt citations, and even issued articles of impeachment, they can still be easily confused with standard oversight.

Despite the differences, investigations generally produce a much heavier imprint on history than ordinary oversight. Oversight obviously involves investigating, and investigations often begin with routine oversight, but the former usually occurs in now-and-again hearings, while the latter was described by one of my respondents as “oversight on steroids.”² Oversight is clearly important for monitoring ongoing government performance, uncovering failures, and sending warning shots, but it is usually brief and all-too-easily ignored and quickly forgotten.

In turn, investigations are also a form of monitoring and prevention, but they are usually longer, more visible, and controversial. Investigations give Congress and the president a particularly significant platform for finding the answers to what one of my respondents called the “big-ticket” failures that undermine the faithful execution of the laws. Simply stated, oversight and investigation are best viewed as separate species within the same genus.

This is not to argue that all of my investigations produced great impact by fixing underlying problems, however. To the contrary, despite their initial promises to repair past mistakes and prevent future failures, just forty investigations achieved a great deal or fair amount of impact in their search for answers, compared with sixty that produced some, little, or no impact at all.³

The sixty less successful investigations were often long, broad, free to investigate, visible, serious, and thorough as they pursued the facts about a breakdown. Many left heavy footprints on investigatory practice, and met the test of the good investigation discussed in the next chapter. But even the heaviest investigations sometimes failed to improve government performance. Again, simply stated, they were historically significant, but had little impact.

Given this mixed track record of impact, the key question for this book is why some of the investigations succeeded, while so many others failed. This book addresses the question using more than thirty “demographic” measures that answer the who, what, where, when, how, and why of each investigation.

An investigation's location in history is measured at its starting date by (1) historical period, (2) presidential administration (Truman through Obama), (3) Watergate (before or after), (4) the president's term of office (first or second), and (5) whether it began in an election year. There are four historical periods covered by this book: the post–World War II period (1945 to 1960), the Great Society (1961–Nixon's resignation in mid-1974), the congressional resurgence (mid-1974 to 1994), and divided government (1995 to 2012).

An investigation's structure and modus operandi are measured by (1) institutional home (Congress or the presidency, and the House or the Senate), (2) venue (full committees, special congressional bodies, subcommittees, or commissions), (3) trigger (police patrol or fire alarm), (4) issue (domestic or foreign), (5) breakdown (process, policy, or personal misconduct), (6) purpose (repair or prevention), and (7) investigatory method (fact finding or blame setting). As used in this book, the term “special congressional bodies” refers to joint, select, or special committees or subcommittees.

The party control surrounding an investigation is measured by (1) party control of Congress and the presidency (unified or divided), (2) party control of Congress (unified or divided), (3) Democratic or Republican control of Congress and the presidency, (4) Democratic or Republican control of the presidency, (5) Democratic or Republican control of Congress, (6) Democratic or Republican control of the House, and (7) Democratic or Republican control of the Senate.

The footprint of each investigation is measured by its (1) length, (2) breadth, (3) complexity of the breakdown, (4) leadership, (5) freedom to investigate, (6) public visibility, (7) seriousness, (8) thoroughness, (9) leverage, (10) durability, and (11) bipartisanship.

Matched against each other as potential predictors of impact, the statistical analysis and fifty case studies presented in this book yield a relatively short list of findings that should help future investigators to achieve maximum impact.

The overall analysis suggests that investigations have a greater impact when they (1) seek to repair the breakdown at hand and (2) use fact finding as their primary investigatory methodology. Many other choices lead to heavier investigatory footprints, including the use of blue-ribbon commissions, for example, but these two basic decisions appear to be the ultimate predictors of investigatory impact. Investigators may not be able to travel through time to less quarrelsome eras, but they can shape the odds of success. This book provides several options for doing so, especially in pursuing answers about why a breakdown occurred and how it might be fixed.⁴

INTRODUCING THE LIST

Building my list of the 100 most significant investigations conducted by Congress and the president during the seventy years following World War II was a challenging task. For one reason, many investigations have already been listed by scholars such as David C. W. Parker and Matthew Dull (1,015 congressional hearings on government waste and malfeasance), Amy B. Zegart (668 presidential commissions), Thomas R. Wolanin (99 blue-ribbon presidential commissions), Jordan Tama (51 major national security commissions), and David R. Mayhew (35 high-publicity congressional investigations), not to mention the long lists compiled by Congressional Quarterly, the Congressional Research Service, the House and Senate historians, and the several dozen investigations described as exemplars by my ninety-six respondents.⁵

Building on this research, my list of highly significant inquiries involved six years of careful reading, multiple rounds of additions and subtractions, and a long list of difficult decisions as investigations were added one-by-one to the final 100. Acknowledging that my decision to cap the list at 100 investigations involved many subjective judgments about significance, or the lack thereof, the final list contains more than enough variation to answer tough quantitative and qualitative questions about the sources of eventual impact.

I am not the first to attach terms such as “major,” “significant,” or “high publicity” to congressional and presidentially initiated investigations. Congressional Quarterly has long done so in building the annual list of major investigations in its *Congressional Quarterly Almanac* and in assigning stories for its *CQ Weekly* reports, as have many others, such as the nonpartisan Project on Government Oversight and the many scholars who have featured specific big-ticket investigations in their work.

Most of these lists contain investigations of single breakdowns by a single committee, subcommittee, or blue-ribbon commission during a single moment in time. The unit of analysis is almost always the hearing set or single commission, not the investigatory topic. Thirty-six of these single-venue investigations made my list, but so did sixty-four multi-venue investigations by multiple committees, special congressional bodies, subcommittees, and even commissions. My sum-greater-than-the-whole rule for creating these packages asked whether these multiple investigations focused on the same broad government breakdown, not on a specific event within the breakdown such as the Alger Hiss case, My Lai massacre, or Vincent Foster’s 1993 suicide. Whether these subsequent multi-venue reviews occurred simultaneously, because investigators joined the fray from both branches and both

chambers of Congress, or were separated over time, all were packaged together within an encompassing breakdown.

Thus did the Alger Hiss case end up within the communists-in-government investigation, My Lai within the Vietnam War investigation, and Foster within the White House misconduct investigation. As appendix C shows, the number of packaged investigations rose steadily between 1945 and 2012: just seven of the twenty-three investigations in the post–World War II period, ten out of nineteen in the Great Society period, twenty-two of twenty-seven during the congressional resurgence, and twenty-five of thirty-one during the divided government era as Congress and the president piled on when big breakdowns occurred, then moved onto other business after the headlines were gone.⁶

Once I completed this process, I designated the primary investigator in each package. This decision was not based on a first-enter/first-primary basis, or on the simple number of hearings produced within a single venue. Rather, the decision was based on a careful reading of the investigatory record that covered the entire package. Despite multiple possibilities, for example, I designated the House Un-American Activities Committee (HUAC) as the primary investigator on communists in government, the Senate Foreign Affairs Committee as the primary investigator on the Vietnam War, and the House Committee on Government Reform and Oversight (and its successor, the Committee on Government Reform) on White House conduct. Despite other hearing sets within the package, these were the primaries that I coded for my analysis of cause and effect.⁷

MAKING JUDGMENTS

As noted, creating my list of 100 investigations involved a mix of subjective and objective questions. Was the investigation long or short, complex or narrow, and led by a visible investigator or a little-known chairman? Was it free to follow every lead or tightly controlled by the congressional leadership or president, visible or largely ignored, and serious or frivolous? And was it thorough or superficial, too prominent to be ignored in its time or quickly buried, bipartisan or partisan, and durable in standing over the long term or rarely remembered? In short, why did each investigation exist, whom did it serve, and how did it reach a conclusion, if a conclusion was reached at all?

The investigations of the 1974 Nixon pardon and 2001 Enron collapse show the wide variation among the inquiries on my list.

The exceedingly brief 1975 investigation of President Gerald Ford's pardon of Richard Nixon made my list entirely because of Ford's forty-five-minute appearance before the House Judiciary Subcommittee on Criminal

Justice on October 17, 1975. Ford made every effort to downplay his testimony, cautioning the subcommittee's chairman, Rep. William L. Hungate (D-Mo.), that his testimony was offered entirely "in a spirit of cooperation," but without any intention "to detract on this occasion or in any other instance, from the generally recognized rights of the President to preserve the confidentiality of internal discussions of communications whenever it is properly within his constitutional responsibility to do so."⁸

Yet Ford appeared nonetheless. As the first president in history to testify before Congress, Ford decided that it was time to put the rapidly spreading pardon rumors to rest:

My appearance at this hearing of your distinguished subcommittee of the House Committee on the Judiciary has been looked upon as an unusual historic event—one that has no firm precedent in the whole history of Presidential relations with the Congress. Yet, I am here not to make history, but to report on history.

The history you are interested in covers so recent a period that it is not well understood. If, with your assistance, I can make for better understanding of the pardon of former President Nixon, then we can help to achieve the purpose I had for granting the pardon when I did.

That purpose was to change our national focus. I wanted to do all I could to shift our attention from the pursuit of a fallen President to the pursuit of the urgent needs of a rising nation. Our Nation is under the severest of challenges now to employ its full energy and efforts in the pursuit of a sound and growing economy at home and a stable and peaceful world around us.

We would needlessly be diverted from meeting those challenges if we as a people were to remain sharply divided over whether to indict, bring to trial and punish a former President, who is already condemned to suffer long and deeply in the shame and disgrace brought upon the office that he held.⁹

After providing an explanation of the president's power to grant pardons and a detailed history of his decision, Ford concluded with a simple sentence: "I assure you that there never was at any time any agreement whatsoever concerning a pardon to Mr. Nixon if he were to resign and I were to become President."¹⁰

Ford's testimony was carefully crafted, but dramatic and precedent setting nonetheless. Although the pardon investigation is easily judged as short, narrow, not particularly serious or thorough, and certainly not bipartisan in its general thrust even though a Republican president appeared before a Democratic House, it earned its place on my list in part because of the attendant visibility

and the hoped-for resolution of persistent public doubts about the alleged quid pro quo. Whether the investigation will lead to future presidential appearances is still in doubt, but its significance is not.

In contrast, the Enron investigation left a much heavier footprint and was more easily included on the list. Media coverage was intense, as was congressional scrutiny. The Congressional Research Service issued 22 separate reports on the collapse in 2001–02, while the Government Accountability Office issued 130 reports, including one in April 2002 titled “Protecting the Public’s Interest: Considerations for Addressing Selected Regulatory Oversight, Auditing, Corporate Governance, and Financial Reporting Issues.”¹¹ The report provided not only a history of events, but also strongly worded recommendations for action.

The investigation was hardly a model of coherence, however. Congress launched at least four separate investigations, three by full committees (the Senate Commerce, Senate Governmental Affairs, and House Energy and Commerce committees) and one by a subcommittee (the House Financial Services Committee’s Subcommittee on Capital Markets, Insurance, and Government-Sponsored Enterprises). Rep. Henry Waxman (D-Calif.) also launched a separate review as the ranking member of the House Oversight and Government Reform Committee. Each investigation covered a key event in the collapse, but the House Financial Services Committee and its chairman Mike Oxley (R-Ohio) eventually claimed the lead.

More important for measuring its eventual impact on government performance, the investigation produced sweeping reforms to prevent future accounting deception and failed regulation through the Sarbanes-Oxley Act, so named for its co-sponsors, Sen. Paul Sarbanes (D-Md.) and Oxley. The investigation itself also created a heavy investigatory footprint based on its length, breadth, complexity, well-known leadership, freedom to investigate, visibility, seriousness, thoroughness, leverage, durability, and bipartisanship. The investigation would have earned the heaviest possible footprint score but for the persistent partisanship of the hearings, which is easily identifiable in Waxman’s breakaway investigation and plausibly linked to its use of blame setting.

PLAN OF THE BOOK

This book examines the history and patterns among the 100 investigations using legislative histories, contemporary media coverage, research articles, and ninety-six “not for attribution” interviews with former members of Congress, executive branch officers, congressional staffers, scholars, journalists, and other investigatory experts listed in appendix A.¹²

Chapter 2 begins with a more detailed definition of terms and a discussion of the methods and sources I used in compiling my list. The chapter continues with a demographic description of the list as a whole, giving specific examples of what I label “forgotten investigations” that made the final tally. It ends with an analysis of the investigatory climate before and after Watergate and during unified and divided party control of government.

Chapter 3 reviews the prevailing definition of what constitutes the “good investigation” and introduces a set of both quantitative and qualitative measures for estimating the relative significance, or footprint, of each investigation. Using my eleven weights to create a summary score, the chapter ranks the footprints created by each of my 100 investigations, followed by another demographic profile using the measures discussed above. The chapter moves forward with examples of light-, middle-, and heavyweight investigations, discusses blue-ribbon commissions in more detail, proceeds with an effort to predict the final footprint scores, and ends with specific advice to investigators on increasing the footprint of their efforts.

Chapter 4 examines each investigation’s impact in repairing or preventing future government breakdowns. Acknowledging the subjective nature of impact and the limits of judging long-term investigatory impacts, the chapter assigns a simple four-point impact score to each investigation and offers a demographic profile of the results. It then discusses six specific types of impact: (1) reforming broken bureaucracies, (2) repairing failed policies, (3) reversing course on national strategies, (4) enhancing accountability, (5) setting the agenda for future action, and (6) resolving doubts about a particular event.¹³ The chapter continues with further analysis of the sources of impact, another examination of blue-ribbon commissions, and advice to investigators on increasing the impact of their work.

Chapter 5 starts with a history of the one investigation I admired most and the one I admired least. It continues with a short review of the book’s findings, and concludes with a set of broad principles that underpin high-impact investigations. If a good investigation involves both quality and impact, investigators must make hard choices. But these choices must be made in the context of a broader set of core foundations that they must maintain as they start their journey to answers.

AUTHOR’S NOTE

This book is written for two very different audiences: current and would-be investigators and those who study investigations. My hope is to resolve some of the long-standing debates about what constitutes the good investigation,

while helping investigators to make thoughtful choices in pursuing impact. These are not mutually exclusive goals, but they do create a more readable book for investigators. For example, all of the percentages that underpin my key findings are presented in the demographic overviews in chapters 2–4, while the supporting statistical analyses are reserved for appendix D.

However, this book involves more than another inventory of investigations. It also introduces new measures of the characteristics, weight, and impact of investigations, many of which are based on my reading of the available record, including my own involvement in the 1983 National Commission on Social Security Reform on behalf of Rep. Barber B. Conable Jr. (R-N.Y.), implementation of the President's Commission on the Shuttle *Challenger* Accident on behalf of the National Academy of Public Administration, and involvement in the 1989 government mismanagement investigation as a senior consultant to Sen. John Glenn's (D-Ohio) Senate Governmental Affairs Committee. I believe that my judgments about each investigation are fair, although others might reach different judgments about the contours of any given investigation. I also recognize that some of my judgments will provoke disagreement. Therefore, this book is best read as a search for answers about investigations, not as a final conclusion about any given inquiry.