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**Civics 101**

**Episode 22: CONGRESSIONAL INVESTIGATION**

**Virginia Prescott:** [00:00:00] I'm Virginia Prescott and this is Civics 101 - the podcast refresher course on some basics that you may have forgotten or slept through in school. We've received a number of questions about congressional investigations. How do they work? When is it Congress's job to investigate an issue? And who does the investigating? Linda Fowler is back with us. She's professor emeritus of government and policy studies at Dartmouth College and author of several books most recently Watchdogs on the Hill. Professor Fowler thanks so much for being willing to school us again.

**Linda Fowler:** [00:00:34] Well investigations have become a pretty hot topic.

**Virginia Prescott:** [00:00:38] They certainly are. Anything in the Constitution mentioning or governing congressional investigations?

**Linda Fowler:** [00:00:45] There's no specific language that says Congress has the power to investigate the executive branch but so it's an implied power. But basically since Congress is charged with making all the laws it needs to inquire whether the executive branch is following the laws that it passed and whether it's doing those things properly.

**Virginia Prescott:** [00:01:06] So we know this is a very timely right now but when was the first congressional investigation?

**Linda Fowler:** [00:01:12] Well actually it was in George Washington's presidency. There were troops engaged on the western border fighting various Indian tribes. And Congress had an inquiry about how that was going.

**Virginia Prescott:** [00:01:25] We've heard of some famous congressional investigations. Can you run us through some of the real benchmarks in the past?

**Linda Fowler:** [00:01:33] Well of really famous one was on war profiteering during World War II that was led by then Senator Harry Truman. Of course the Watergate investigations in the 1970s by Sam Ervin Southern Democrat from North Carolina who chaired the Judiciary Committee. We've also had a recent investigation about conditions at Walter Reed Hospital that in addition to Watergate many people may remember the McCarthy investigations of domestic communism.

**Virginia Prescott:** [00:02:05] What is the difference between a probe and an investigation? We're hearing a lot about Congress or agencies are probing what's going on now or what did go on with the Trump campaign or administration and Russia well investigate is a little more loaded isn't it?

**Linda Fowler:** [00:02:21] It implies there was wrongdoing. So a probe is let's find out whether there's wrongdoing but in terms of the mechanics there's really not much of a difference. With the exception being that sometimes Congress creates special committees by statute that are charged with investigating something particular. So for example when Frank Church's committee investigated abuses of intelligence gathering and activities by the CIA in the 1970s that was especially authorized investigation.

**Virginia Prescott:** [00:02:54] Now we're saying congressional investigation so that's both chambers the House and the Senate. Why are there separate investigations called by the House and the Senate?

**Linda Fowler:** [00:03:03] Well you have to go back to 1946 after World War Two when committees could launch investigations but they had to get approval from their chamber to do it after 1946 when Congress enacted a statute it required all current standing committees in the House and the Senate to engage in oversight and conduct inquiries. And gradually these committees such as the Armed Services Committee or the Judiciary Committee were granted subpoena powers so they could compel witnesses to come before them to testify. So you can get investigations in one chamber but not the other. The inquiry's about the potential activity by Russians in our 2016 elections. It's unusual in that both chambers are running oversight hearings but they are not official investigations with specially hired staff.

**Virginia Prescott:** [00:04:05] OK so you mentioned subpoenas. You know when they talk about the language of congressional investigations they're questioning witnesses testifying. Are they the same legal procedures and protections as a trial?

**Linda Fowler:** [00:04:20] Yes and no. So they have some quasi legal features for example the subpoena that a few ignore a subpoena from a congressional committee. You can be compelled to testify. You can be locked up for contempt of Congress if you don't. It used to be the case that during the McCarthy era people who refused to testify were nevertheless threatened with being locked up for contempt of Congress. So after the mid 50s there are more procedural protections for witnesses. They can't be compelled to testify against them. And so one odd thing that you coming up right now is whether if a congressional committee grants immunity to a witness whether that's binding on the Justice Department. And so if you look at what happened last week where General Flynn asked for immunity in exchange for giving testimony to the Senate Intelligence Committee looking at the Russia connection if the Senate granted immunity then any testimony that he gave could not be used against him in a criminal or civil prosecution.

**Virginia Prescott:** [00:05:35] So he's talked about probe's oversight. Some of the things that can happen in a congressional investigation can you help me break down the types of investigation. I've seen things like standing committee bipartisan select committee independent special prosecutor. Can you help discern what is what?

**Linda Fowler:** [00:05:53] All right. So all government agencies have their own internal oversight activities. Most of them have what are called inspectors general and they report to the president. But they can also be called to testify before Congress on their findings. You also have standing committees which are the regular committees that Congress uses to vet legislation markup bills and so forth so that like the Senate Armed Services the Judiciary Committee Intelligence that kind of thing. The Senate Intelligence Committee correct then you may have either the Senate or the House or jointly authorize an investigative committee. So for example the House Armed Services Committee and the Senate Armed Services Committee both launched inquiries after the consulate in Benghazi Libya was overrun by a mob and several Americans were killed. They had their inquiry. They had public testimony. Republicans in the house at the time were not satisfied. They were convinced that Secretary Clinton had been negligent. So the House then went ahead and authorized an investigation. And they set up a special committee with special staff. So the difference I think between an investigatory committee and an oversight committee has to do with whether the Senate is using its existing organizations or whether it creates a new one with a very special purpose.

**Virginia Prescott:** [00:07:34] I know we're talking about the different types of investigations but I'm just curious about members of these standing committees do they have any training as investigators. You know why are they qualified to do these investigations?

**Linda Fowler:** [00:07:47] Well the whole point of the committee system in Congress is that members develop expertise in a particular policy area. So people on the Intelligence Committee are supposed to have had at least some experience in dealing with intelligence matters people armed services may have special expertise on defense matters. But there's a lot of variation among chairs and among members. So Devin Nunes for example has been in the Congress I think since 2000 he's chair of the House Intelligence Committee but he hasn't been on the committee very long and he's only been chairman for a term and his vast lack of experience is very much evident in the fact that he's gotten himself into difficulties in how he's handled intelligence inquiries and of course going around this committee to brief the White House a couple of weeks ago. So there's a wide range of expertise some chairs and committee members are very conscientious. They work hard on their committees. Others not so much.

**Virginia Prescott:** [00:08:55] OK. How about an independent commission. There have been many calls for an independent commission to study this issue.

**Linda Fowler:** [00:09:02] OK independent commissions are made up of people who are not necessarily serving in Congress. And they are appointed in various combinations by the executive branch or by the Congress or some combination of the two. So an independent commission has to be authorized by statute which means it has to pass both chambers and it has to be signed by the president into law.

**Virginia Prescott:** [00:09:29] But if you're investigating the executive branch does the executive still have sign off on who's on this independent commission?

**Linda Fowler:** [00:09:37] It depends on what Congress puts in the statute. But you can well imagine with Republicans controlling the House and the Senate that they might give the president more voice than if the Democrats were controlling the House and Senate when they drafted the law. There's a lot of horse trading that goes on in deciding how big the commission's going to be who's going to be on it so a classic example would be a different kind of independent commission was used to look at budget deficits. This one was created by Barack Obama and he appointed some members of Congress to it as well as former members of Congress and and some experts. And they were charged with coming up for a plan for reducing the deficit the Social Security commission was appointed by Ronald Reagan in 1983 to figure out how to put Social Security on a more stable situation. And that commission not only came up with recommendations but they also produced a draft you know helped to produce draft legislation. So a lot of it depends on what the politics are. But for many people including me using the standing committees the existing committees like the Senate and House intelligence committees make more sense because you don't have to go through the lengthy delays of passing legislation getting by and for the different parties and establishing what their jurisdictions are.

**Virginia Prescott:** [00:11:11] Yes but we have clearly seen how partisan divisions and loyalties work within Congress. There have been some doubts. You know an op-eds, pundits, journalists have raised doubts about whether or not those kind of loyalties might prohibit a more real robust investigation in this case and that cases of the past.

**Linda Fowler:** [00:11:28] That's exactly right. And so this is why you have a prominent Republican like John McCain calling for an independent commission. And as well as many Democrats. But you have to recognize there's a tradeoff here. The tradeoff has a lot to do with timeliness. If you have more time to go into depth with an issue then the commission is so way to go particularly if both parties agree as they did with 9/11 that this was a major matter of such grave import that you needed a special organization with special staff resources and so forth. But the 9/11 commission didn't issue its report until years after the September 11th disaster. I think many people feel that with this election it's legitimacy with the fact that there seems to be ongoing efforts by people connected with Russia to undermine the political process not just here but in various other countries like Ukraine France and so forth I think Senate or House committee could deliver a result in a shorter amount of time. But whether it would be credible or not it's hard to know right now. It may very well be that what the Senate and House committees will come up with is there's enough activity here to warrant a full commission but at least right now we don't know that.

**Virginia Prescott:** [00:13:06] When does the American public have any way to weigh in on whether there is a congressional investigation calling their reps? Does that matter?

**Linda Fowler:** [00:13:15] Of course it does. There are a couple of things that the public needs to convey. The first thing is that they think these allegations are serious and need to be taken seriously by both parties. Their job is not to rush to judgment and say he's guilty. You know the Trump people are guilty or they are not guilty. But what the public does have a responsibility to do is to insist that this be handled in a judicious manner and that Republican views and Democratic views are weighed carefully.

**Virginia Prescott:** [00:13:51] Linda Fowler, you are just a font. Thank you so much for speaking with us.

**Linda Fowler:** [00:13:55] It's my pleasure as always, Virginia.