



# *The Webster and Ingersoll Investigations*

By Todd Garvey<sup>1</sup>

Precedent-setting congressional investigations of the executive branch come in various forms. Many are triggered by fundamental constitutional clashes; others by the discovery of rampant corruption, criminal behavior, and failed cover-ups. However, some investigations cannot be said to find their origins in such weighty conflicts, but rather arise from long-festering personal or political quarrels. The 1846 House investigation of Daniel Webster and a related inquiry into his accuser and fellow congressman, Charles Ingersoll, represent two such investigations. Despite their origins, the investigations are strong evidence of Congress's longstanding authority to obtain information on even the most sensitive aspects of the executive's conduct of foreign affairs, including through compelled testimony of former presidents and other high-ranking executive branch officials.

## A. Background

The 1840s were a time of American territorial expansion. The nation's borders were pressing outward in the southwest, the northwest, and the northeast. But expansion brought conflict and an era of stiff political discord between the two dominant political parties of the day: the Democrats, who had earlier coalesced around Andrew Jackson and now ascribed to the doctrine of "Manifest Destiny"; and the Whigs, who were concerned by both Democratic expansionist policies and the growing power of the presidency. Daniel Webster, the "second-generation" Whig senator from Massachusetts and two-time secretary of state, played as prominent a role as any during the political battles of the 1840s, and in some sense paid the political price for his efforts during the debate over the northwestern border in the spring of 1846.

After Webster served fourteen years in the Senate and four years as secretary of state under President John Tyler,<sup>2</sup> the Massachusetts state legislature returned Webster to the Senate in 1845. James K. Polk was elected to the presidency that same year on an expansionist platform in which he pledged to bring Texas, California, and the entire Oregon territory into the union. Though campaigning on the slogan of "fifty-four forty or fight"—a reference to the Democratic desire to extend America's borders to the absolute northern boundary of the Oregon territory, at 54 degrees, 40 minutes latitude—Polk reached a compromise with the British in 1846 in which the northwest border would be set farther south, at the 49<sup>th</sup> parallel.<sup>3</sup>

The Oregon question stirred intense debate in Congress. Dissatisfaction with Polk's compromise in the northwest prompted harsh criticism of the previous administration's handling of the northeast boundary dispute. Specifically, the Democrats objected to the Webster-Ashburton Treaty, negotiated by Secretary of State Webster only four years prior, which had resolved the ongoing—and, at times, violent—conflict over the placement of the Maine and New Brunswick border. The treaty represented a compromise, in which neither side received all the territory it had hoped for.<sup>4</sup> The

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2. Tyler, then vice president, ascended to the presidency after William Henry Harrison's untimely death only a month into his first term. Though Harrison was a Whig, Tyler was viewed as an independent.

3. ROBERT V. REMINI, *DANIEL WEBSTER: THE MAN AND HIS TIME 609-10* (1997).

4. IRVING H. BARTLETT, *DANIEL WEBSTER 179* (1978).

Democratic “eagle-screamers of Manifest Destiny,”<sup>5</sup> however, had seen the agreement with Great Britain as a folly—an opportunity for further expansion squandered by Secretary Webster.

In February 1846, Charles Ingersoll, an eager expansionist and Democratic chairman of the House Foreign Affairs Committee, took to the House floor and attacked Webster and his role in what Ingersoll considered the disastrous Webster-Ashburton Treaty.<sup>6</sup> Had Webster not bungled the Maine question, argued Ingersoll, America would have been in a much stronger negotiating position in the Oregon dispute, and President Polk never would have had to settle for an Oregon boundary at the 49<sup>th</sup> parallel.

Ingersoll’s attack on Webster was presumably motivated by both political and personal forces. Politically, Ingersoll and Webster clearly had conflicting views on American territorial expansion generally, and the Maine, Oregon, and Texas questions specifically. But there was also evidence of personal discord between the two. Years earlier, Webster had spearheaded a Senate investigation into allegations that Ingersoll had accepted bribes while serving as a U.S. attorney in Pennsylvania.<sup>7</sup> Ingersoll was later removed from that position by President Andrew Jackson. Ingersoll, in turn, had been active in criticizing Webster throughout his tenure as secretary of state. Although it would appear that the enmity between the two was mutual, Ingersoll was viewed as “highly partisan” and a “man of violent political prejudices.”<sup>8</sup> As a result, and perhaps due to Webster’s stature, the “prevailing impression made upon the moderate men of both parties was that Mr. Ingersoll’s spleen was the result of some private pique.”<sup>9</sup> In any event, the personal nature of the conflict was evident to fellow members of Congress.<sup>10</sup>

In early April 1846, Webster responded to Ingersoll’s criticisms with a “stinging” and virulent “tirade,” the likes of which has rarely been heard on the Senate floor.<sup>11</sup> In a speech bursting with personal attacks, Webster described Ingersoll as having a “grotesque” and “bizarre” mind, with not just a “screw loose,” but “screws loose all over.”<sup>12</sup> In defending himself, Webster angrily asserted that Ingersoll’s comments “entirely justify the use of that expressive monosyllable.”<sup>13</sup>

## B. The Congressional Investigation

Ingersoll then elevated the dispute on April 9<sup>th</sup>. Seeking his “personal vindication,” Ingersoll accused Webster of specific “misdemeanors” while serving as secretary of state, including the “fraudulent misapplication and personal use of the public funds, and corrupting party presses with...money appropriated by law.”<sup>14</sup> The funds at issue were those appropriated by Congress for what was known as the “secret service fund,” a contingent “slush fund” established for the president to use to cover secret expenditures necessary for the effective conduct of foreign affairs and intercourse. In an effort to obtain the evidence necessary to prove Webster’s crimes, Ingersoll then introduced, and the body adopted, a resolution calling for the president to provide the House with “an account of all payments made” out of the fund since 1841, including “to whom paid, [and] for what.”<sup>15</sup>

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5. REMINI, *supra* note 3, at 608.

6. CONG. GLOBE, 29<sup>th</sup> Cong., 1<sup>st</sup> Sess. App. 284-86 (1846).

7. REMINI, *supra* note 3, at 536.

8. EDWARD P. CRAPOL, JOHN TYLER: THE ACCIDENTAL PRESIDENT 125-26 (2012).

9. VARINA DAVIS, JEFFERSON DAVIS: A MEMOIR BY HIS WIFE 250-51. <http://www.perseus.tufts.edu/hopper/text?doc=Perseus%3Atext%3A2001.05.0037>. Jefferson Davis was a member of the committee investigating Ingersoll’s accusations against Webster. Mrs. Davis called the entire investigation a “tempest in a tea-pot.” *Id.* at 250.

10. CONG. GLOBE, 29<sup>th</sup> Cong., 1<sup>st</sup> Sess. 729 (1846) (“If the application relates to the personal matters between the gentleman from Pennsylvania and the gentleman from Massachusetts, I protest against it...because the time of the country is too precious to be consumed in matters of personal crimination and recrimination...”) (statement of Mr. Haralson); *Id.* at 639 (Mr. Hilliard “regretted the unpleasant state of affairs—the personal collision (for certainly every one must see that it was such) which had arisen between a distinguished Senator, and the distinguished gentleman on his left...”).

11. REMINI, *supra* note 3, at 610-1.

12. CONG. GLOBE, 29<sup>th</sup> Cong., 1<sup>st</sup> Sess. 616-22 (1846).

13. *Id.*

14. CONG. GLOBE, 29<sup>th</sup> Cong., 1<sup>st</sup> Sess. 636 (1846).

15. *Id.* at 643. The resolution introduced by Ingersoll originally called for Webster to furnish the House with the requested documents. The resolution was amended to request the documents from the president. *Id.* at 636-43.

Ingersoll's speech made clear that he articulated these charges with an eye toward impeachment. This led initially to a debate as to whether the House even held the authority to impeach an officer that had already left office. Although opposing Ingersoll's resolution on the grounds that it would infringe on presidential prerogatives, John Quincy Adams, secretary of state-turned-president-turned-member of the House, authoritatively rejected any view that the House's power of impeachment did not extend to "former" officials. Adams' influential remark—"I hold myself, so long as I have breath of life in my body, amenable to impeachment by this House for everything I did during the time I held any public office,"<sup>16</sup>—established an interpretation of the scope of the impeachment power that remains the accepted rule today.

Noting that the appropriation to the secret service fund provided the president with the discretion to keep secret "such expenditures as he may think it advisable not to specify," Polk refused the House's request for evidence of all payments made on the grounds that the law did not permit him to disclose secret expenditures made by previous administrations.<sup>17</sup> Polk himself had not approved any such expenditures. The president's response also relied on broad assertions of the exclusivity of presidential powers in foreign affairs, asserting, for example, that "our foreign negotiations are wisely and properly confined to the knowledge of the Executive during their pendency."<sup>18</sup> Despite Congress's general oversight role and its obvious interest in how federal funds are spent, neither the House nor Senate appears to have immediately objected to the president's position.

Stymied by the president, Ingersoll returned in late April with more specific allegations after apparently being provided access to State Department records, perhaps thanks to connections he had made through his position as chairman of the House Committee on Foreign Affairs. Ingersoll made three specific accusations against Webster. First, he alleged that Webster had engaged in the unlawful use and control of the secret service fund by requiring that, without the president's knowledge, all expenditures be disbursed through him rather than directly to third parties. Second, having established independent control over the fund, Webster had misused federal dollars to "corrupt the party presses" during negotiation and debate over the Webster-Ashburton Treaty. Third, Webster had left his position as secretary of state in default to the government, owing a debt of \$2,290 to the fund. In making each accusation, Ingersoll described the underlying evidence—including account entries and other internal communications—that he asserted proved Webster's guilt.<sup>19</sup>

The ensuing debate, however, did not go as Ingersoll had planned. Rather than focusing on the allegations made against Webster, some members of the House, led by Congressman George Ashmun of Massachusetts, were more concerned about how Ingersoll had come into possession of the evidence he claimed to possess, especially in light of the fact that the president had recently refused to produce the very same information for the House. In a heated debate between Ashmun and Ingersoll (in which the rhetoric was of such a nature that Ingersoll called Ashmun a "liar" and a "coward," and Ashmun responded by reminding Ingersoll that in Massachusetts they "neither believe in dueling, bowie-knives, or pistols"), Ashmun pointed out that the question for the House was "by what means, foul or fair...has this pretended information been extracted from the secret archives of the State Department."<sup>20</sup>

A resolution was then offered directing that a special committee be appointed to "inquire how the seal of confidence imposed by law" upon the Department of State had been broken and how Ingersoll had obtained the information on secret expenditures that formed the basis of the accusations he had presented to the House.<sup>21</sup> It was not until the final moments of the debate on that proposed resolution that an amendment was offered to also establish a second select committee "to inquire into the truth of the charges this day made...against Mr. Daniel Webster, with a view to founding an impeachment."<sup>22</sup> The amendment was accepted, the resolution adopted, and the committees formed.

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16. *Id.* at 641.

17. *Id.* at 698.

18. *Id.*

19. *Id.* at 729-30.

20. *Id.* at 731.

21. *Id.* at 734.

22. *Id.* at 735.

By modern measure, both select committees conducted their business quickly, releasing final reports only two months later in early June. Moreover, despite the sensitive subject matter of the investigations; their direct relation to the executive's approach to foreign relations, treaty negotiations, and the employment of secret agents; and the president's prior refusal to disclose details on the use of the secret service fund to the House, neither select committee appears to have had difficulty obtaining information that was necessary to complete a fair and thorough investigation. Importantly, the evidence received included internal executive branch communications as well as direct testimony from former presidents and current high-ranking executive officials.

The select committee appointed to investigate the allegations against Webster began by deposing former President John Tyler to determine the manner in which his administration used the secret service fund. Tyler's testimony revealed that the president had, consistent both with law and previous administrations, indeed placed the fund at the disposal of his secretary of state and had certified all expenditures made.<sup>23</sup> The president had instructed Webster to use the funds to employ certain "confidential agents" in Maine that could effectively "make known" to the public the administration's views on the northeast border dispute "by all proper means."<sup>24</sup>

According to communications that had been obtained by the committee, Webster had, in turn, used the funds to employ Francis O.J. Smith, a former member of Congress and influential Mainer, to sway public opinion in the state towards the compromise position favored by Webster and Tyler on the ongoing boundary dispute. Smith and others were employed to hold "interviews with leading and influential men" of both parties to "induce favorable action...on the part of the legislature" and to "procur[e] a favorable expression thereto on the part of the press" through submission of editorials supporting the administration's position.<sup>25</sup> Although not using funds to directly bribe or corrupt the press or for any other unlawful purpose, it was clear, as one biographer has suggested, that "Webster and Tyler had used public funds to manipulate public opinion among their own citizens."<sup>26</sup> Though a new approach to diplomacy, it was no crime.<sup>27</sup>

Finally, the committee reviewed the accounts and determined that Webster had, in fact, repaid any outstanding balance at the time he left the State Department, and it was possible that the government actually *owed* Webster \$500.<sup>28</sup>

In light of the evidence, the committee concluded that "there is no proof in relation to any of the charges to impeach Mr. Webster's integrity or the purity of his motives in the discharge of the duties of his office."<sup>29</sup>

The select committee to investigate the conduct of Congressman Ingersoll also received testimony, generally pursuant to subpoena, from high-level executive branch officials, including sitting Secretary of State James Buchanan, former President Tyler, former President John Quincy Adams, and an interrogatory from President Polk.<sup>30</sup> The testimony received focused on State Department practices for securing information and the manner in which the department provided members of Congress and Chairman Ingersoll specifically with access to confidential files.

Although it obtained a "mass of testimony," the select committee did not see fit to make any recommendation to the House.<sup>31</sup> Rather, the report stated that "the committee has concluded to present the evidence which they have collected, without any expression of their opinion in regard to what it established." It was left to the House as a whole to "deduce"

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23. H.R. REP. NO. 684, at 8-10 (June 9, 1846).

24. *Id.* at 9-10.

25. *Id.* at 16.

26. BARTLETT, *supra* note 4, at 194.

27. The minority report, however, noted that "[w]hether this direct effort of the general government, through the agency of one of its high functionaries and the employment of pecuniary means for the purpose of influencing the legislative action of a State government, constitutes an impeachable offence in that functionary, the undersigned will not assume to decide." H.R. REP. NO. 684, at 38 (June 9, 1846).

28. *Id.* at 3.

29. *Id.* at 4.

30. H.R. REP. NO. 686 (June 12, 1846).

31. *Id.* at 1.

what it would from the accumulated evidence.<sup>32</sup> The report went only so far as to suggest that evidence that “connects and implicates” subordinate officers in the State Department should be “communicated to the proper executive heads.”<sup>33</sup>

While Congress took no action in response to either committee report, Webster himself was able to inflict one last insult upon Ingersoll the following year, when President Polk submitted Ingersoll’s nomination as ambassador to France to the Senate. Webster, still stinging from the Ingersoll allegations, used his influence to ensure that the nomination was defeated.<sup>34</sup>

### C. The Webster-Ingersoll investigation and congressional power

At least three noteworthy and lasting principles of congressional investigative power can reasonably be drawn from the Webster-Ingersoll dispute and its resulting investigations.

First, with respect to the scope of Congress’s oversight power, the investigations suggest that foreign affairs, even clandestine foreign operations relating to treaty negotiations, are not immune from congressional oversight and do not form a legitimate justification for withholding information from Congress. This is especially the case when the conduct being investigated involves the expenditure of appropriated funds. Moreover, the investigations equally suggest that Congress may properly compel testimony and documents reflecting internal communications from executive branch officials of the highest rank—subject, of course, to the types of constitutionally-based presidential confidentiality interests hinted at by President Polk, though not of the breadth articulated in his response to the House.

Second, with respect to the effectiveness of congressional oversight, the Webster investigation displays that Congress is able to exercise prudence in how it handles sensitive information obtained from the executive branch. The committee, for example, expressly acknowledged that its “investigation has brought out facts (which are embodied in the testimony) connected with the foreign relations of the country, the disclosure of which public policy would seem to forbid.”<sup>35</sup> The committee also noted that it had received certain evidence under “an implied understanding” that the information would not be made public except “in the event of an impeachment.”<sup>36</sup> To that end, the committee chose to seal much of the received testimony, declining to make it public.<sup>37</sup> Congress can often more effectively and efficiently obtain sensitive information necessary for the conduct of an investigation when the executive branch is willing and able to trust in a committee’s discretion.

Finally, with respect to Congress’s ability to enforce its investigatory powers, the Webster investigation became an important point of consideration eleven years later, during the passage of the criminal contempt statute in 1857. That statute makes failure to comply with a congressional subpoena for either testimony or documents a federal misdemeanor.<sup>38</sup> The Webster investigation was explicitly referenced during a floor discussion in which questions were raised about whether it would be appropriate for the criminal contempt statute to be applied in a scenario in which a witness was asserting some form of privilege over the information requested, or where the information sought related to executive branch “diplomatic matters.”<sup>39</sup>

In response to these questions, Congressman James Orr, who argued on behalf of the committee that reported the bill, referenced the Webster and Ingersoll investigations, noting that “this House has already exercised the power and authority of forcing a disclosure as to what disposition had been made for the secret-service fund. And it is right and proper that it should be so. Under our Government—under our system of laws—under our Constitution—I should

32. *Id.*

33. *Id.*

34. WILLIAM MONTGOMERY MEIGS, *THE LIFE OF CHARLES JARED INGERSOLL* 291 (1897).

35. H.R. REP. NO. 684, at 4 (June 9, 1846).

36. *Id.*

37. Ultimately, the House chose to print the testimony relating to the use of secret service funds to influence the press. CONG. GLOBE, 29<sup>TH</sup> CONG., 1<sup>ST</sup> SESS. 988 (1846).

38. 2 U.S.C. §§ 192, 194.

39. CONG. GLOBE, 34<sup>TH</sup> CONG., 3<sup>RD</sup> SESS. 430-32 (1857).

protest against the use of any money by an executive authority, where the House had not the right to know how every dollar had been expended, and for what purpose.<sup>40</sup> It would appear, then, that in enacting the criminal contempt statute, the House presumably viewed the secret service fund investigations as appropriate in scope and precedential in nature. And most importantly, the House apparently believed that investigative demands regarding the activities of executive branch officials are properly subject to enforcement through the criminal contempt statute.

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40. *Id.* at 431.