



## *2. The Institutional Framework of Congressional Oversight: Purposes, Powers, Limitations and Practicalities*

The law of congressional investigation consists of a complex combination of constitutional rulings and principles, statutory provisions, byzantine internal rules adopted by the House and Senate and individual committees, informal practices, and folkways. Although there is no black letter guide for the uninitiated, we hope that this study will provide a first step in that direction. To that end, this chapter sketches the purposes of oversight, the legal authorities to accomplish it, and the obstacles that congressional overseers face, both internal and external.

### **A. The Purposes and Powers of Congressional Oversight**

Congressional oversight of the executive is designed to fulfill a number of important purposes and goals, including to:

- ensure executive compliance with legislative intent;
- improve the efficiency, effectiveness, and economy of governmental operations;
- evaluate program performance;
- prevent executive encroachment on legislative powers and prerogatives;
- investigate alleged instances of poor administration, arbitrary and capricious behavior, abuse, waste, fraud, and dishonesty;
- assess agencies' or officials' ability to manage and carry out program objectives;
- assess the need for new federal legislation;
- review and determine federal financial priorities;
- protect individual rights and liberties; and
- inform the public about how its government is performing its public duties.

Legislative oversight is most commonly conducted through congressional budget authorizations, appropriations, confirmations, and investigative processes, and, in rare instances, through impeachment. All legislative oversight serves the purpose of informing Congress so that it may effectively develop legislation, monitor the implementation of public policy, and disclose to the public how its government is performing. Oversight conducted through authorization, appropriations, or confirmation exercises tends to be more routine, whereas congressional investigations are often adversarial, confrontational, and sometimes high profile.

Beyond the traditional purposes of oversight, the inquisitorial process also sustains and vindicates Congress's role in our constitutional scheme of separated powers and checks and balances. There is a rich history of congressional investigations

from the first examining of the failed St. Clair expedition in 1792 through those assessing the Teapot Dome scandal, Watergate, Iran-Contra, the excesses of domestic intelligence activities exposed by the Church Committee, Whitewater, informant corruption in the FBI's Boston Regional Office and, most recently, the removal and replacement of U.S. attorneys and the cover-up of unlawful gun-walking to Mexican gang cartels. These investigations have established, in law and practice, the nature and scope of the tools upon which Congress may rely to maintain its role in our constitutional scheme.

Congress's right of access to executive branch information has been recognized by innumerable Supreme Court and lower federal court decisions. These precedents establish a broad and encompassing power in the Congress to engage in oversight and investigations that reach all sources of information so that Congress can carry out its legislative functions. In turn, congressional committees have been granted a formidable array of tools to ensure access. Committees can: issue subpoenas; grant immunity to force testimony of witnesses invoking their Fifth Amendment privilege against self-incrimination; provide for staff deposition authority to more efficiently screen potential witnesses and set the stage for public hearings; establish rules for the conduct of hearings which may provide less protection for witness rights than is provided in court proceedings; and hold recalcitrant witnesses in contempt of Congress and subject them to criminal prosecution or an inherent contempt proceeding that may result in imprisonment and/or fines.

## B. The Power of Congress over Executive Branch Agencies

The Constitution is silent about the administrative bureaucracy and its operation. There is scant mention of departments and agencies. But it is apparent from the constitutional text that Congress has the power to create agencies and offices and can select the manner of appointment of officials.<sup>1</sup> And although the Constitution says nothing on such issues as the removal of officers or who controls the decision-making of the agencies—the president or Congress—the Supreme Court has recognized the legislature's primacy in establishing the nation's policy directions and, in appropriate circumstances, may even limit presidential at-will removal authority.

In historical practice, Congress creates, locates, and abolishes agencies and offices. Congress also sets qualifications for officeholders, as well as the terms of their tenure and compensation, and other incidents of office. Congress is also the sole source of agency powers, functions, and funding. It defines the missions of agencies and provides the authorities of the agencies to carry out those missions. Most often, these powers are given to agency heads not to the president. In short, Congress can tailor the offices of government in virtually any way it deems necessary to accomplish its legislative designs.

Also in historical practice, the president normally has authority to appoint and remove and to supervise and coordinate the actions of executive branch officers. However, such presidential supervision and coordination as to how subordinates will carry out their missions, which derives from Article II's investiture in the president of all the "executive power," is clearly limited by Supreme Court and lower federal court precedent holding that the Take Care Clause<sup>2</sup> does not provide the president with the power to decide whether or which laws should be carried out, but rather creates an obligation that the president is to ensure that executive branch officials carry them out as Congress has ordered.<sup>3</sup> But it is also manifest from Supreme Court precedent that Congress is forbidden from appointing executive branch officers or removing them, from granting the power

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1. The Constitution, in Art. I, §8, cl. 18, provides for Congress "To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by the Constitution in the government of the United States, or in any department or officer thereof." Art. II, §2, cl. 2 provides that the Senate shall advise and consent to all superior officers of the United States "which shall be established by law, but Congress may by law vest appointment of such inferior officers, as they think proper, in the president alone, in the courts of law, or in the heads of departments."

2. Art. II, § 3 ("[The President] shall take Care that the Laws be faithfully executed.").

3. See, e.g., *Kendall v. United States ex rel. Stokes*, 37 U.S. (12 Pet.) 524, 610 (1838) (holding that where a valid duty is imposed on an executive official by Congress, "the duty and responsibility grow out of and are subject to the control of the law, and not to the direction of the President."); *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 587 (1952) (holding that the president does not have the inherent power to take possession of private property in order to keep labor disputes from stopping steel production necessary for the war effort); *Medellin v. Texas*, 552 U.S. 491, 532 (2008) (rejecting the argument that under the Take Care Clause the president can issue an order that pre-empts established state law by relying on a non-self-executing treaty which does not establish domestic law unless Congress acts to make it so. The president's order was held an attempt to legislate, not execute, the law.); *Lear Siegler Inc. v. Lehman*, 842 F.2d 1102, 1124 (9th Cir. 1988) (holding that once the president puts his signature to a law it "becomes part of the law of the land and the president must 'take care that [it] be faithfully executed'" and has no authority to "employ a so-called 'line item veto' and excise or sever provisions of a bill with which he disagrees."); *NTEU v. Nixon*, 492 F.2d 587, 604 (D.C. Cir. 1974) (holding that the Take Care Clause does not permit the president to refrain from executing duly enacted laws"); *Ameron, Inc. v. U.S. Army Corps of Engineers*, 610 F. Supp. 750, 755 (D. N.J. 1985), (aff'd 809 F.2d 1986) (holding that a presidential direction to agencies not to comply with an enacted provision of law "flatly violates the express instruction of the Constitution that the president shall 'take care that the laws be faithfully executed.'"); see also, e.g., Zachary S. Price, *Enforcement Discretion and Executive Duty*, 67 VAND. L. REV. 671 (2014).

to administer laws to legislative branch officers, or from unduly limiting the presidential removal power.<sup>4</sup>

## C. Barriers to Effective Oversight

In short, with these powers and legal precedents, shouldn't Congress win most of its disputes with the executive branch over access to information? Absolutely. Does it? Mostly, but "it depends" is the honest answer. On what? On how badly Congress wants to protect its institutional interests, the sufficiency of the informational access resources it provides its committees, and on how skilled and determined the committees are in utilizing the powers, rules, tools and informational resources available to them.

Experience has shown that in order to engage in successful oversight, committees must establish their credibility with the executive departments and agencies they oversee early, often, consistently, and in a manner that evokes respect, if not fear. A request to an agency for information, documents, or briefings from either a committee chair or staff should be immediately respected by the agency. Agency leadership and staff should automatically understand that if the request is not answered and there is no legitimate explanation, Congress will follow up with more formal, uncomfortably public processes.

But effective oversight is a hard task even in the best of times, and recent years have not been the best of times for accommodative relations between the legislative and executive branches. For over three decades, the executive has consistently advocated an expansive view of presidential power under the rubric of "the unitary executive" theory and has taken bold steps to make it an operative reality. This has included an expanded notion of the bounds of presidential executive privilege and prerogatives and efforts to block assertions of legislative powers to access essential information. Similar incursions have taken place with respect to the oversight and control of agency rulemaking,<sup>5</sup> member protections under the Speech or Debate Clause,<sup>6</sup> and the temporary filling of vacant advice and consent positions,<sup>7</sup> among others. The pendulum has swung seemingly inexorably further toward increased presidential power, in large measure due to the acquiescence of the Congress itself and its failure to effectively assert its own powers and prerogatives in response to such encroachments.

At the same time, Congress has neglected the very serious problem of insufficient resources to conduct effective oversight. Congressional committees lack staff with expertise and incentives to stay on board for extended periods, and the ability to call upon adequately funded, reliable, and nonpartisan legislative research, analysis and informational support organizations for assistance. Accomplishing the ten oversight goals set forth above would be difficult under optimal circumstances. It is next to impossible with the self-imposed restraints Congress has placed on its oversight apparatus as a result of what one commentator has described as a conscious, long-term "decimation and marginalization" of both congressional staff and the research capacity of legislative support agencies.<sup>8</sup> To fully appreciate the problem, one must understand the breadth of Congress's responsibilities, the complexity of the bureaucratic milieu it has created and needs to oversee, and the competing urge of the executive branch to control legislative outcomes.

4. *See, e.g.*, *Myers v. United States*, 272 U.S. 52 (1926) (Congress cannot require Senate approval for removal of presidential appointee); *Buckley v. Valeo*, 424 U.S. 1, 128-1310 (1976) (congressional appointments to executive positions are prohibited); *INS v. Chadha*, 462 U.S. 919, 944-45 (1983) (Congress may not control execution of the laws except through Article I procedures holding legislative vetoes unconstitutional); *Bowsher v. Synar*, 478 U.S. 714, 736 (1986) (Congress may not delegate executive functions to an official, the comptroller general, who is removable by Congress); *Free Enterprise Fund v. PCAOB*, 561 U.S. 577 (2010) (holding that "dual for-cause" limitations on the removal of Board members contravened separation of powers limitations).

5. *See* Chapter 12 *infra*.

6. *See* Chapter 10 *infra*.

7. *See* Chapter 9 *infra*.

8. Paul Glastris and Haley Sweetland Edwards, *The Big Lobotomy: How Republicans Made Congress Stupid*, WASHINGTON MONTHLY, June 2004, [http://www.washingtonmonthly.com/magazine/junejulyaugust\\_2014/features/the\\_big\\_lobotomy050642.php?page=all](http://www.washingtonmonthly.com/magazine/junejulyaugust_2014/features/the_big_lobotomy050642.php?page=all). *See also* Lee Drutman and Steven Teles, *A New Agenda for Political Reform*, WASHINGTON MONTHLY, March 2015; Jonathan Rauch, *Political Realism: How Hacks, Machines, Big Money, and Backroom Deals Can Strengthen American Democracy* (Brookings Institute 2015) <http://www.brookings.edu/research/reports2/2015/05/political-realism-rauch>; Charles S. Clark, *Are Underqualified Congressional Staff Impeding Oversight, Wasting Agencies Time?*, GOV'T EXECUTIVE (2016).

At present, Congress must confront, oversee and contain an executive branch for which it has created 180 agencies, staffed by 4.1 million civilian and military employees, with a budget of \$3.9 trillion per year. The executive branch encompasses an ever-expanding and divergent social, economic and legal context and agenda, with continuing, insistent public demands for more government involvement. The legislative branch, in contrast, consists of a relative handful of agencies, has 30,000 employees and is funded at about \$45 billion per year. Congress enacts perhaps 50 significant laws each year. By acknowledged necessity it has had to delegate vast administrative lawmaking powers to executive agencies to implement the programs Congress establishes and it is under constant pressure to delegate still more. As a consequence, executive agencies issue some 4,000 substantive rules each year, 80 to 100 of which are “significant” or “major” and have economic effects of \$100 million or more.

In the past, when Congress has recognized executive intrusions it has answered with appropriate measures. Following the experiences of the Great Depression and World War II, Congress acted in response to growing concerns respecting its ability to understand and control emergent social and economic issues and the unchecked growth of executive power. The 1946 Legislative Reorganization Act rationalized committee structures and added permanent staff to committees as well as to support agencies like the Legislative Reference Service (the future Congressional Research Service), Congress’s in-house think tank.

Then, in the 1970s—in reaction to executive forays in the Vietnam War, presidential impoundments of funded projects, Watergate, and revelations of secret domestic and foreign intelligence activities by the Church and Pike inquiries—Congress enacted a series of historic reforms that were specifically aimed at bulking up and professionalizing the committee staffs and those of existing and newly created support agencies. It dramatically increased staff for committees, the Congressional Research Service (CRS), and the General Accounting Office (now the Government Accountability Office) (GAO). Congress also expanded GAO’s responsibilities from simply performing an agency auditing function to providing analyses of agency policy effectiveness. Congress also expanded its policy development capacity by creating two new in-house (almost exclusively merit-based) think tanks: the Office Technology Assessment (OTA), established in 1972 to help Congress become up-to-date on emerging technologies; and the Congressional Budget Office (CBO), created in 1974 in the wake of the Nixon budget impoundment crisis, to provide the legislature with foundational information and analysis with respect to the budget process. By 1979, committee and policy support staffing levels had tripled (with legislative staff peaking at 4,337, and GAO and CRS rising to 5200 and 825 staff, respectively).<sup>9</sup> Two developments further buoyed the need for additional congressional staff: First, the 1975 House decision to abandon the full committee seniority system and to decentralize legislative authority among newly created subcommittees; and second, the establishment by both houses for the first time of standing committees to oversee the intelligence community.

The result was one of the great eras of congressional oversight, which lasted until the mid-1990’s despite a flat lining of legislative staff expansion after 1980. Subcommittees gained increased capacity to acquire, process and analyze information—often with overlapping jurisdictions—and were operating in a decentralized legislative environment. This stimulated competition among individual members to undertake diverse legislative actions, often bipartisan in nature, and encouraged them to pursue in-depth examinations of emergent oversight concerns.

This all dramatically changed in 1995 with the advent of the first House Republican majority in 40 years. The new Republican leadership, led by Speaker Newt Gingrich, cut committee staff by a third, immediately reduced legislative support staff at GAO by a third, failed to increase CRS funding beyond incremental inflation rises, and abolished the Office of Technology Assessment.<sup>10</sup> Today, GAO and CRS operate at about 80% of their 1979 professional personnel

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9. The House and Senate figures do not include personal member or leadership staffs but do include CBO and OTA.

10. Glastis, *supra* note 8; Drutman, *supra* note 8. That year Congress also defunded the Administrative Conference of the United States (ACUS), an independent think tank established by Congress in 1964 devoted to research and analysis of the ways and means to make government agencies’ decision-making processes more efficient, effective and fair. Over the course of its existence until 1995, ACUS issued over 200 recommendations, the majority of which were at least partially implemented by congressional enactments or agency adoptions. The recommendations generally enjoyed broad support across the political spectrum, the three branches of the federal government, and the academic and private sector legal communities. In monetary terms, the savings resulting from ACUS’s recommendations was often estimated at multiple times its annual appropriation, which in 1995 was \$2.1 million. The story of the 14 year effort to revive ACUS, that included the historic appearances of Supreme Court Justices Antonin Scalia and Stephen Breyer at two hearings in support of refunding, is ably related in Susan Jensen, *An Informal Legislative History of the Reauthorization of the Administrative Conference of the United States*, 83 GEO. WASH. L. REV. 1410 (2015).

capacity.<sup>11</sup> In 2011, when the Republicans regained their House majority, they cut the House budget by an across-the-board 20%.<sup>12</sup> At the same time, policy decision-making—including control of the initiation of sensitive investigative inquiries—became centralized in the political leadership of both houses.<sup>13</sup>

Recent scholarship and commentary posit that if current trends in congressional staffing and organization continue, serious consequences will ensue—for the integrity of the legislative process generally and for effective congressional oversight in particular. There is real concern that Congress is losing its capacity to collect and process the information it needs in order to effectively develop policy alternatives or conduct oversight inquiries.<sup>14</sup> In the modern era, legislative and political issues have become extraordinarily complex and the demands for knowledge have grown exponentially. Budget cuts have led to insufficient staffing, both on committees and in personal offices. There is also a growing experience gap: staff turn over rapidly because of both low pay and term limits on committee chairs (when chairs depart staff typically depart, too, which wipes out essential expertise and institutional memory). Often, while under constant pressure, staff lacking the deep expertise necessary to understand a policy area—particularly when economic, regulatory or technology issues are involved—must seek information from outside sources. With the similar budget constraints imposed on neutral resources like GAO and CRS, almost all that information will come from outside interested parties. By an overwhelming margin, those outside parties are business and special interest lobbyists who can provide detailed justifications for their perspectives, often presented by extremely savvy and experienced lawyers and lobbyists who can supply draft legislation along with action plans to get it passed. Reported lobbying expenditures in 2013 were \$3.4 billion.

The current extended period of congressional dysfunction and its effect on the oversight process demands legislative attention. The seemingly obvious, straight forward solution is to expand the House and Senate budgets for committees—where more of the policy development and oversight work takes place—so that they can hire new, qualified personnel with both pay and security incentives to foster long-term employment. A core of the new committee cadre could be employed by the committee itself, rather than by the chair or individual members, to further encourage extended service.<sup>15</sup> This could be accompanied by a similar expansion of funding at GAO and CRS to allow them to bring on new, experienced hires. But even this solution is problematic in light of the notion that impelled the diminishment of legislative branch funding in the first place: that cuts in the funding of “big government” should start at home to show the seriousness of its resolve.

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11. The decline in expert senior analytic personnel at CRS has been particularly disturbing. CRS’s enabling legislation clearly anticipates the appointment of “Specialists and Senior Specialists” in at least 22 explicitly enumerated broad fields of congressional interest. They are to be selected “without regard to political affiliation, and solely on the basis of fitness to perform the duties of the position” and are to be paid at “not less than the grade in the executive branch of the Government to which research analysts and consultants, without supervisory responsibility, are currently assigned.” That grade has long been pegged at the Executive Level III. *See* 2 U.S.C. § 166 (c)(2)(A)(B), (c). The intent was to create a cadre of nationally recognized, independent area experts with no supervisory duties. In 1989 there were 18 such senior specialists and 38 specialists—a total of 54—to cover the 22 area categories. There has been no competitive selection for either category of specialist since 1989. As of the end of 2016 three senior specialists and three specialists remained, all at retirement age. At the same time, CRS management began to assign the titles (and pay) of these senior positions to administrative officials with none of the necessary qualifying credentials, or even with research responsibilities, thus creating a top-heavy management structure. All this was done with the apparent tacit consent of CRS’s jurisdictional oversight committees, which in recent years have denied increases in its annual budget. The situation has led to more rapid turnover of professional analysts. CRS was even forced to hire a prominent law academic as a *consultant* to edit the renowned Constitution Annotated, which had traditionally been edited by a resident senior specialist in constitutional law who was always available for congressional consultation. The most recent rejection of a CRS request for increased funding for new hires was anomalously denied by the Senate Appropriations Committee, stating, “[I]t is not clear how CRS plans to modernize in a resource constrained environment while fulfilling the priority needs of Congress. While the increase requested in fiscal 2017 includes support for 22 additional full-time equivalents that purports to improve service to Congress, bringing on board new employees may not be a practical, cost effective solution to optimize service. The Committee directs CRS to examine ways in which the internal structure of the organization may be improved to meet the challenges of the ever-changing Congressional environment and provide a report to the Committee on a proposed restructuring within 120 days of enactment of this act. The report should include recommended changes to staffing, pay levels, the management structure, technology, and research priorities in order to create and support work flow, products and services that best meet Congress’ needs.” S. Rep. No. 114-258, at 40 (2016). *See also*, LOUIS FISHER, DEFENDING CONGRESS AND THE CONSTITUTION 287-90 (2011).

12. Glastris, *supra* note 8.

13. Drutman, *supra* note 8.

14. *See* Clark, *supra* note 8.

15. Drutman, *supra* note 8.

## D. How to Conduct Effective Oversight

Notwithstanding the afore-described external and internal impediments, congressional oversight can and must go on. It should be kept in mind that the obstacles raised by the Justice Department with respect to committee subpoena enforcement do not apply to subpoenas issued to private sector parties subject to inquiries. Moreover, with the threat of potential agency appropriation cuts for serious noncooperation, accommodation at some point is likely. The question is, then, how is effective oversight accomplished? The chapters that follow detail the tools of oversight and the applicable legal doctrines that sustain the process. But, first, it is important to set forth a few broad principles:

**Oversight Should Be a Leadership Priority:** The leadership of the House and Senate must send the message to committee chairs that oversight, and in particular operational oversight, is a priority, and that they will fully support oversight decisions, strategies, and enforcement no matter who is in the White House. Even—or especially—when the president is of the same party as the one in control of Congress, it is critical to our system of checks and balances that Congress conduct effective oversight. Every standing committee should be encouraged to establish a subcommittee on investigations. Committee chairs should take care in selecting competent, dedicated and experienced staff who are familiar with the rules and the oversight powers available to Congress.

**Develop Good Working Relationships with the Executive Branch:** Staff should be encouraged to develop effective, ongoing, informal relations with key agency personnel. Committees should create and keep open lines of communication with agency personnel no matter how much they disagree with or distrust them. Informal, regular contact with key staff can be vital. It is useful to encourage a sense in the agency that it is better to give the committee a “heads up” about a problem before the committee reads about it in the *Washington Post* or the *New York Times*. The development of interbranch relationships founded on mutual respect, if not actual trust, is necessary, though difficult and time consuming.

**Prepare, Prepare, and Prepare Some More:** Intensive preparation is the first rule of successful oversight. Rarely should an inquiry begin with a subpoena for documents or testimony at a hearing. Formal compulsory process should be the product of urgent need after a sufficient period of fact gathering and fact checking. If the purpose of a document subpoena is to preserve material from possible destruction, that goal can be legally accomplished by a letter from the chair. The letter should announce the initiation of an inquiry pursuant to the committee’s authority, describe its purpose and scope, and request documents in categories that are relevant to the inquiry. Such a letter should be sufficient to provide the notice necessary to invoke the federal criminal law prohibition of obstruction of a congressional proceeding.

**Staff Must Pay Attention to Details:** Every letter, every phone call, every meeting, and every hearing should have some well-defined purpose. “How am I furthering understanding or resolving the matter before the committee?” should be the question at every step of an ongoing investigation. An oversight inquiry should be viewed as a “staged process.” That is, it should be understood that you are going from one level of persuasion or pressure to the next to find out the “who, what, when, where, and why” of a situation.

**Cooperate During the Investigation Whenever Possible:** Normally, a subpoena should not be served out of the blue. Rather, it should follow only after the parties have reached an impasse. Even at impasse, if the votes for a subpoena are available, a quite effective tactic is to grant the chair authority to issue the subpoena for a definite period, or even indefinitely. Past experience has shown that the threat of a subpoena is often sufficient to spur reconsideration of previously adamant refusals (or to demonstrate that the committee was not just bluffing). This most often leads to further negotiation and accommodation.

**When to Hold a Hearing:** Hearings are most effective when there is a compelling horror story, a smoking gun to reveal, or an important point to make publicly. When hearings are held, the committee should clearly and explicitly advise all witnesses of the subjects to be discussed and of what materials they should bring with them. Failure to be precise invites the response, “Gee, I didn’t anticipate that. We’ll get back to you with the answer in writing soon.” After a hearing concludes, there must be prompt follow-up or the advantage of the hearing is quickly lost.

**Involving the Minority:** If at all possible, investigative staff should involve the minority in the process. Bipartisan support for an oversight proceeding can greatly enhance the chances of its success. Members and staff can be sure the agency or the private sector subjects of the investigation will contact supporters in Congress, especially if the White House is controlled by a different party than the one in control of one or both houses of Congress. Holding periodic staff meetings with other members and staff of the committee to inform them about the nature of and reason for the investigation can help in more easily garnering support for future enforcement efforts.

**Rely Upon, Use, and Protect Information Sources and Outlets:** Whistleblowers are often the most useful committee informants. They must be protected. The word will get out if a committee leaves them hanging or allows them to be targets for retaliation, and these invaluable sources of information will then dry up. Staff should become familiar with federal and state whistleblower protection laws, so they can properly advise and protect these witnesses. It can also be helpful for the chair to send a firm letter to an agency head making clear that retaliation will not be tolerated if evidence of such action appears.

**Using the Media:** The media can be useful in bringing pressure on agencies or private sector targets of the investigation, and in garnering public support for the inquiry. Media coverage of an investigation can also assist in attracting whistleblowers to come forward.

**Provide Proper Training for Staff and Rely on Existing Expertise:** Finally, committees must address the problem of staff expertise. Learning on the job may be the only alternative in light of high rates of staff turnover on Capitol Hill. Teaming an experienced investigator with a less experienced colleague can provide fresh ideas and be helpful to both staff members. Periodic “brainstorming” sessions among the investigative staff can enhance the sharing of experience. CRS has presented periodic oversight workshops that have provided valuable introductions.<sup>16</sup> CRS analysts can provide useful support at all stages of an investigation with respect to legal advice, hearing procedure, and background information on policy and programmatic issues. GAO can provide investigative backup as well as program evaluations. Offices of inspectors general can be enlisted to probe questionable agency activities. The Project on Government Oversight (POGO) has for some time been holding luncheon seminars for congressional staff and presenting experienced authorities on timely topics of oversight.<sup>17</sup>

**Learning From Past Inquiries:** Perhaps the most valuable resource is the study of past investigations. There are several useful studies of past inquiries.<sup>18</sup> For example, CRS has issued a report, which it periodically updates, on important Justice Department investigations since 1920. Through detailed descriptions of these probes, the report reveals the broad parameters of inquiry available to committees when investigating any executive branch agency.<sup>19</sup> Reading the published hearing transcripts and reports on such investigations can also provide valuable insight on strategy, and the reports often contain copies of the correspondence between the committees and the subject agencies and organizations that show the parries and thrusts as the proceeding develops.<sup>20</sup>

16. *See e.g.*, H. COMM. PROJECT ON RULES, 106TH CONG., CONGRESSIONAL OVERSIGHT: A ‘HOW-TO’ SERIES OF WORKSHOPS (Comm. Print June 26, July 12 and 26, 1999) (Sponsored by the speaker and chair of the House Rules Committee and organized and conducted by CRS).

17. POGO has also published an invaluable practical introductory guidebook entitled *THE ART OF CONGRESSIONAL OVERSIGHT: A USERS GUIDE TO DOING IT RIGHT* (2d ed. 2015).

18. *E.g.*, ROGER A. BRUNS & DAVID L. HOSTETTER, *CONGRESS INVESTIGATES: A CRITICAL AND DOCUMENTARY HISTORY* (Raymond W. Smock ed. 2011) (detailing major inquiries between 1792 and 2006).

19. CONG. RESEARCH SERV., RL34197, *CONGRESSIONAL INVESTIGATIONS OF THE DEPARTMENT OF JUSTICE, 1920-2012: HISTORY, LAW AND PRACTICE*.

20. *See, e.g.*, Staff of the H. SUBCOMM. ON OVERSIGHT AND INVESTIGATIONS, ENERGY AND COMMERCE COMM. 103d Cong., *DAMAGING DISARRAY: ORGANIZATIONAL BREAKDOWN AND REFORM IN THE JUSTICE DEPARTMENT ENVIRONMENTAL CRIME PROGRAM*, (Comm. Print 103T, 1994) (containing a description and analysis of the Subcommittee’s two year probe, including a 342 page chronological compilation of all documents, correspondence and research sent and received by it).

For discussions of classic investigations which illustrate the tactics, strategies, and obstacles involved in complex and contentious inquiries, see the following case studies, by three preeminent overseers, in Part II:

Elise J. Bean: *Investigating the Financial Crisis*

Debra Jacobson: *1992-1994 Investigation of the Justice Department's Environmental Crimes Program*

Michael L. Stern: *Henry Waxman and the Tobacco Industry: A Case Study in Congressional Oversight*