



Levin Center Scholars Roundtable Summary

June 9, 2017 – Wayne State University Law School
Prepared by Elise Bean, Linda Gustitus and Sandy Colvin

Roundtable Participants

Levin Center at Wayne Law Participants: Carl Levin, Chair; Jocelyn Benson, Director; Linda Gustitus and Elise Bean, Washington Co-Directors; and Sandy Colvin, Interim Program Manager.

Scholars: Lauren Bell, Emily Berman, J. Richard Broughton, A. Christopher Bryant, Daniel Carpenter, Kathleen Clark, Brian Feinstein, Richard Hall, John Hanley, Bryan Jones, Kevin Kosar, Timothy LaPira, Jonathan Lewallen, Kenneth Lowande, Jason MacDonald, Jennifer Selin, Jeff Spinner-Halev, Sean Theriault, Craig Volden, and Andrew Wright.

Observers: Eugene Driker, Levin Center Advisory Board Chair; Jack Mogk, Levin Center Faculty Committee Chair; Eric Luper, Citizens Research Council of Michigan; and Marjorie Sarbaugh-Thompson, Wayne State University.

Roundtable Packet Materials: Agenda; Participants List; Towards a National Research Agenda on Congressional Oversight; Letter from Senator Charles Grassley on Congressional oversight requests; Levin Center descriptive materials; and Wayne State University Law School descriptive materials.

Opening Remarks

Linda Gustitus, Levin Center Washington Co-Director, welcomed the scholars, described the Levin Center's mission and activities, and explained that encouraging high quality research into Congressional oversight is an essential part of the Center's work.

Senator Carl Levin, Levin Center Chair, described the Constitutional basis for Congressional oversight; discussed the importance of bipartisan, fact-based oversight investigations; commended Senator Grassley for disputing a White House Office of Legal Counsel opinion suggesting agencies are not legally required to respond to oversight requests from Senators in the Minority Party; and discussed the basis and need for parallel Congressional and special counsel proceedings in the ongoing investigation of Russian interference with the 2016 presidential election.

Jocelyn Benson, Levin Center Director, welcomed the gathering of scholars on behalf of Wayne State University Law School, thanked Eugene Driker and Jack Mogk for leading an

early morning tour of Detroit for the scholars, and noted the critical role of Congressional oversight in current events.

Elise Bean, Levin Center Washington Co-Director, explained the Roundtable agenda and went through the materials in the scholars' packets. She also moderated the discussions that followed.

Scholar Presentations

Each scholar was given five minutes to present a description of their past research into Congressional oversight issues and their plans for future research. The Levin Center noted that the scholars came from multiple disciplines including law, government, political theory, and history, and some had been invited, not because of their past research but in hopes that they would enrich the conversation about what should be included in a national research agenda for Congressional oversight. The scholars went around the table to make their presentations.

Andrew Wright, Savannah Law School – Discussed his article examining information access disputes between the Congressional and Executive Branches, and another on Congressional due process issues. He is considering examining Congressional oversight of state and local issues and issues involving foreign affairs.

Craig Volden, University of Virginia – Discussed his work with the Center for Effective Lawmaking, and measuring the effectiveness of individual Members of Congress from 1973 to the present, using a scoring system. Discussed examining the role of state legislative experience and bipartisanship on legislator effectiveness, and public awareness of legislators' oversight efforts. He is considering examining the impact on effectiveness of term limits and the role of staff.

Richard Broughton, University of Detroit Mercy School of Law – Discussed the intersection of Congressional oversight and federal criminal law, including oversight of the Department of Justice and separation of powers issues. Has also examined the role of the Senate in impeachment proceedings as well as Congressional contempt and immunity issues.

Jonathan Lewallen, University of Tampa – Described his contribution, along with Bryan Jones, Sean Theriault, and others, in creating a database identifying and coding over 22,000 Congressional hearings. Discussed data showing a decline in Congressional committee productivity, with fewer legislative hearings, fewer bills, and more one-sided hearings with limited information. Also discussed how subcommittees appeared to be conducting less oversight, bowing instead to their full committees.

Rick Hall, University of Michigan – Discussed how the pressure of daily activities, including district travel, fundraising, and reduced staff resources has made it difficult for

Members of Congress to conduct policy-making and oversight activities. Has also examined how legislators choose oversight topics and related opportunity costs, using clean air issues as a case study. Also examining the impact of lobbyists.

Chris Bryant, University of Cincinnati – Worked in the Senate Legal Counsel’s office in Washington; has focused on federalism and legal history. The Levin Center noted that he was invited for his expertise in history and to help address the absence of recent scholarship on the history of Congressional oversight.

Kenneth Lowande, Washington University – Discussed his focus on “informal,” “closed door” oversight by Congress, particularly at federal agencies, and his efforts to develop a database of Congressional requests and contacts with agencies. Also discussed his focus on oversight efforts by individual Members of Congress, why they specialize in certain issues, and whether their oversight efforts are effective.

Bryan Jones, University of Texas – Discussed his focus on interactions between lawmaking and oversight, including how monitoring the implementation of a new law leads to policy impacts. Also discussed his interest in how Members of Congress set priorities for conducting oversight investigations, and how to use oversight to measure Member effectiveness.

Kathleen Clark, Washington University – Discussed her focus on legal ethics and oversight issues, using national security issues as case studies. Has looked, in particular, at Congress’ right to consult staff about classified operations and programs. Has also examined the role of whistleblowers and Inspectors General in Congressional oversight efforts.

Jason MacDonald, West Virginia University – Discussed his focus on the ability of Congress to provide for the general welfare under the Constitution, and on how and why Congress influences federal agencies. Has also examined how Congress brings local perspectives to its work, using as case studies the appropriations process, and the rescue of the automobile industry during the financial crisis, including a Congressional dispute with the Obama Administration over closing car dealerships.

Kevin Kosar, R Street Institute – Discussed how oversight makes government accountable to voters, and his focus on legislative capacity issues that make it difficult for Congress to conduct good oversight. Discussed an upcoming research effort examining why some Members of Congress conduct oversight and what incentives affect how oversight is carried out.

Emily Berman, University of Houston Law Center – Discussed her focus on Congressional oversight of national security policy, including Congressional access to classified information, executive privilege, surveillance issues, the role of the FISA court, and how the Executive Branch is using algorithms to analyze big datasets.

Jeff Spinner-Halev, University of North Carolina – Noted that he has not done any work on Congressional oversight, but specializes in democratic political theory and ethics issues. The Levin Center noted that he was invited to help address the absence of recent research into the political theories underlying oversight and the role of oversight in democratic systems of government.

Brian Feinstein, University of Chicago Law School – Discussed his focus on how certain structural issues affect Congressional oversight and how oversight effectiveness can be measured. Explained his creation of a dataset of agency “infractions,” Congressional hearings examining those infractions, and the extent to which the hearings led to fewer infractions, concluding Congress reduced agency infractions by about 20%. He is considering examining how agency structures affect Congressional oversight.

Dan Carpenter, Harvard University – Discussed his focus on Congressional oversight and agency rulemaking, in particular the problem of agency “capture,” using financial rulemaking as a case study. Has also examined issues related to a strong Executive Branch versus a weak Congress, and Executive Branch transparency issues.

Sean Theriault, University of Texas – Discussed his focus on party polarization in Congress, including the impact of the “Gingrich Senators,” and using warfare and legislative process issues as case studies. Has also examined the effect on oversight when the party controlling Congress does or does not control the Presidency.

Jennifer Selin, University of Illinois – Discussed her focus on Congressional oversight of administrative agencies, including her work updating the Sourcebook of Administrative Agencies which, in December 2017, will list 300 agencies, up from 119. Also examining Congressional delegation of authority to agencies, including through multiple, interactive laws. She is considering examining Congressional staff communications with agency personnel and Congress’ use of agency detailees.

Lauren Bell, University of Randolph-Macon – Discussed her focus on Congressional oversight of the judicial branch and the courts, including the confirmation process for judges and Congressional efforts to strip subject matter jurisdiction from federal courts. Has also examined Senate filibusters.

Tim LaPira, James Madison University – Discussed his focus on Congressional capacity issues, including how Congressional staffs handle multiple issues, despite declining numbers, and the movement of staff from committees to personal offices, and from Washington to state offices. Has also examined the revolving door between Congress and lobbyists. Is currently collecting data from multiple chiefs of staff, staff directors, and others about the causes and consequences of declining staff.

John Hanley, Duquesne University, soon to be University of Central Florida – Discussed his focus on Congressional investigations of the Executive Branch versus other investigative subjects, including the role of Congressional reports and the extent to which report dissents signal a lack of bipartisanship. Has also examined whether Members of

Congress take into account whether their investigations will lead to useful results in deciding whether to proceed.

Carl Levin, Wayne State University Law School – Discussed his development, with Jocelyn Benson, of a law student course featuring Congressional oversight. Also discussed his development, with Professor Alan Schenk, of a tax course that included how corporations dodge U.S. corporate taxes, using excerpts from his Senate oversight hearings. In addition, discussed his interest in Congressional oversight of administrative rules, including through the Congressional Review Act and its precursor, the legislative veto.

Elise Bean, Levin Center at Wayne Law – Discussed her focus on describing the norms, standards, and practices associated with conducting bipartisan, fact-based Congressional oversight, including work on a book about the Levin years on the U.S. Senate Permanent Subcommittee on Investigations.

Development of a National Research Agenda

After their presentations, scholars were divided into three groups to develop recommendations for a national research agenda on Congressional oversight.

After the scholars reconvened, Professor Peter Henning, Wayne State University Law School, disclosed that the law school was considering holding a symposium on Congressional oversight issues in March 2018, and devoting an 2018 edition of the law school review to the topic. When asked for a show of interest in participating in the symposium and law review edition, virtually all scholars raised their hands.

Representatives from the three groups made presentations on their groups' research recommendations. Scholars discussed the recommendations, identified key issues, and developed a list of the possible components of a national research agenda. The consensus research agenda follows.

CONGRESSIONAL OVERSIGHT RESEARCH AGENDA DEVELOPED BY THE LEVIN CENTER SCHOLARS ROUNDTABLE

June 9, 2017

Topic One: Defining Congressional Oversight and Measuring its Effectiveness

- Oversight typologies
- Oversight mechanisms
- Who conducts oversight
- Possible measures of effectiveness
 - Did it achieve Members' goals?
 - Did it tackle meaningful issues?
 - Did it transmit meaningful, credible information?
 - Was it conducted in a bipartisan manner?
 - Did it produce policy outcomes?
 - Did it build confidence in Congress?
- What is the appropriate time frame for measuring effectiveness?

Topic Two: Oversight Scope and Structure Issues

- How are oversight priorities set?
- Impact of committee jurisdiction and party objectives
- Role of Congressional leadership
- Congressional resource and capacity issues
- Incentives to conduct oversight
- Incentives to conduct bipartisan versus partisan oversight
- Methods and techniques for conducting oversight
- Information access issues
 - Minority party information requests
 - Intelligence committee staff access to classified information
 - Executive Branch objections to subpoenas
 - Enforcement of information requests
- Information quality issues
 - Structuring hearings
- Interactions between oversight and legislation

Topic Three: Specific Oversight Topics

- Databases related to Congressional oversight
- Field hearings
- History of oversight and changes over time
- National security
- Financial institutions
- Judicial Branch

Roundtable Wrap-Up

Scholars shared their closing observations and suggestions, with several expressing appreciation for the Roundtable's convening the session. When asked how the Levin Center could further advance their research efforts, scholars indicated support for the Levin Center's engaging in the following activities:

- (1) establish an academic email list-serve to foster conversation and collaboration on research efforts;
- (2) facilitate a conference call or meeting in Washington to enable scholars to interview Congressional staff about oversight issues; and
- (3) use the Levin Center website as a repository for academic research papers on Congressional oversight.

The scholars expressed strong support for the Levin Center to continue its efforts to encourage more, high-quality research into Congressional oversight.