Using Oversight To Effect Change and Design Legal Reforms

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What is Oversight?

• Fact-based investigations into problems: finding out what happened and why.
  – Can use to examine government or private sector issues.

• Use facts to design reforms.
  – Can consider both existing & new laws.
Legal Basis for Legislative Inquiries

Legislatures have inherent authority to investigate.

U.S. Supreme Court explains:

“A legislative body cannot legislate wisely or effectively in the absence of information.”

--McGrain v. Daugherty (1927)

“[A] representative body ... is meant to be the eyes and the voice, and to embody the wisdom and will of its constituents.”

--Trump v. Mazars (2020)

Legislative inquiries gather facts to produce informed decisions.
Why Conduct Oversight?

• Get the facts needed to analyze problems.
• Hold persons or entities accountable.
• Educate legislators, agencies, the public.
• Generate momentum for reform.
• Effect change.
Can Use Oversight to Help Mobilize the Media & Public
Legislative Inquiry v. Prosecution

- Legislature investigates
- Purpose: change policy
- Use reports & hearings

- Prosecutor investigates
- Purpose: punish crime
- Use trials & guilty pleas
Who Can Investigate

• Committees

• Special Committees

• Individual Legislators
From Light-Touch to In-Depth

Oversight inquiries can range:

– From online or telephone inquiries;
– To letter requests & interviews;
– To subpoenas & hearing testimony.
4 Phases of an In-Depth Investigation

• Fact-Finding
• Written Product
• Hearing
• Followup
Example: Big Tobacco
Family Smoking Prevention and Tobacco Control Act of 2009

Authorized the FDA to regulate the manufacturing, advertising, and sale of tobacco products.
Rates of Cigarette Smoking

Cigarette smoking rates have fallen significantly for both youths and adults.


Percent Current Smokers

Year


42.4% 36.4% 43.7% 12.8%
Example:
Hidden Bank Accounts
Enforcement Actions

- US DOJ investigated UBS and issued a deferred prosecution agreement.
- UBS paid a $780 million fine and disclosed over 4,000 client names to IRS.
Foreign Account Tax Compliance Act of 2010 (FATCA)

All non-U.S. financial institutions must disclose to the IRS large accounts opened by U.S. persons or pay a 30% tax on their U.S. earnings.
Global Response to FATCA

• OECD established worldwide FATCA-style system to exchange account information.

• Over 100 countries agreed to use Common Reporting Standards.

• Disclosures began in 2017.
Measuring Good Oversight

• Quality of the Investigation

• Credibility of the Inquiry

• Support of multiple political parties

• Policy Impacts
Using Oversight to Design Legislation

• Use inquiry to identify key problems.
• Research current laws, other countries’ laws.
• Consult legislators from investigation.
• Consult experts, agencies, outside groups, using oversight results.
• Brainstorm on possible reforms.
Consider Narrow Remedies

• Establish deadline to implement existing law.
• Assign duties to specific officials.
• Provide extra funding or resources.
• Improve key standard.
• Strengthen oversight.
Build Alliance for Broader Remedies

• Team up with legislators from the investigation.
• Enlist experts, outside groups following the inquiry.
• Draft materials using evidence from the inquiry.
• Design initial bill; negotiate compromises.
Legislative Oversight

• Oversight inquiries can establish facts.
• Oversight inquiries can bridge divides.
• Oversight inquiries can create momentum.
• Oversight inquiries can produce legislation.
Thank you!

For more information:

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https://levin-center.org/oversightscholars/portraits/

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