

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

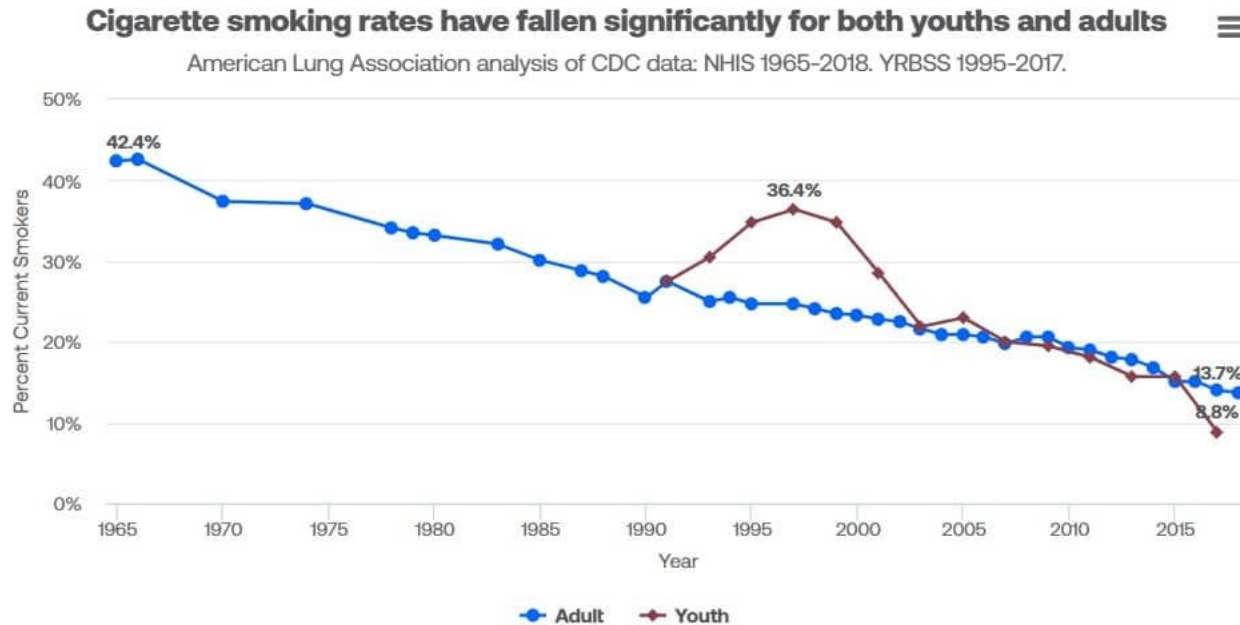


Family Smoking Prevention and Tobacco Control Act of 2009

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



Rates of Cigarette Smoking



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
- Support of multiple political parties
- Credibility of the Inquiry
- 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!

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