



Hearings in the U.S. Senate: A Guide for Preparation and Procedure

-name redacted-

Analyst on Congress and the Legislative Process

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Summary

Congressional hearings are the principal formal method by which committees collect and analyze information during the legislative policymaking process. Whether confirmation hearings—a procedure unique to the Senate—legislative, oversight, investigative, or a combination of these, all hearings share common elements of preparation and conduct.

Senate Rule XXVI sets forth many of the hearing regulations to which committees must conform, including the quorum requirement, advance submission of witness statements, the opportunity for minority party Senators to call witnesses of their choosing, and procedures for closing a hearing to the public. Senate committees, guided mainly by their chairmen, have broad discretion in how they conduct a hearing, in part because the committees adopt their own rules of procedure. These rules may supplement Senate rules, but they can not contravene them. Committee customs and leadership style not embodied in rules also vary considerably among committees and influence hearing procedures.

Committee members and staff usually plan extensively for hearings. Early planning activities commonly include collecting background information; preparing a preliminary hearing memorandum for the chair and members; discussing the scope of the hearing and the expected outcome; scheduling and providing public notice of a hearing; selecting witnesses; determining the order and format of their testimony; and preparing questions or talking points for committee members to use in questioning witnesses. Other considerations include preparing briefing books, determining whether the hearing will be broadcast and alerting the media, and attending to the many administrative arrangements, such as reserving a hearing room, scheduling a hearing reporter, and arranging for there to be a video or audio recording of the proceeding or a written transcript that will be available to the public soon after the event.

On the day of the hearing, a committee needs a quorum to proceed with testimony. While the vast majority of hearings are open to the public, a committee can vote to close a hearing for specific reasons stated in Senate rules. Senators typically make opening statements at the beginning of a hearing, then witnesses are introduced and may be sworn by the chair. Witnesses present oral testimony in accordance with an arranged format; this testimony generally is a summary of a written statement submitted in advance. The question and answer period that follows is an opportunity for a committee to expand upon a witness's statement and gather information to support future actions.

Following a day of hearings, committee staff may prepare a summary of testimony, draft additional questions for the day's witnesses, and begin initial preparation of the transcript for printing. While not required, hearing transcripts commonly are printed, along with additional materials approved by the committee.

This report will be updated as events warrant.

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Introduction

Coverage and Organization of This Report

Under Senate rules, each committee is authorized to hold hearings whether the Senate is in session, has recessed, or has adjourned (Rule XXVI, paragraph 1). Committees may hold hearings in Washington, or field hearings in the states or abroad. Whether legislative, oversight, investigative, confirmation, or a combination of these, all hearings share common elements of preparation and conduct. This report emphasizes these shared elements.

Senate Rule XXVI, in particular, details hearing procedures. Each committee is required to adopt and publish written rules of procedure consistent with Senate rules. A committee can expand upon Rule XXVI. A committee's rules also generally apply to its subcommittees, and may also contain procedures that apply specifically to subcommittees.

The rules of many committees contain provisions for hearings, and this report gives examples from the 109th Congress. These examples are illustrative, intending to show variations in particular areas. In some cases, several committees have similar provisions, but only one committee is presented as an example. This report does not attempt to list comprehensively all provisions of committee rules that apply to hearings.

Further, the summaries of both Senate and committee rules are not intended to capture every nuance and detail of the rules. Senators and staff are advised to consult the text of the appropriate Senate or committee rule.

In addition to Senate and committee rules, this report covers common practices in planning and holding hearings, which may vary significantly among committees. Senators and staff are advised to contact specific committees for detailed information on their rules and practices.

The report is organized into four main sections. This introduction addresses the role of hearings in the committee process, types of hearings, and broad organizational issues.

Committee members and staff plan carefully and deliberately for hearings. Section two of this report, "Preparation for Hearings," discusses the planning process. Among other topics, this section covers:

- deciding whether to hold a hearing;
- sources that assist committees with hearings;
- obtaining supplemental staff by contract or detail;
- holding joint hearings;
- prohibitions on when committees may meet;
- scheduling and public notice of hearings;
- selecting witnesses and determining the order and format of testimony;
- securing advance written testimony from witnesses;
- procedures for issuing subpoenas and taking depositions;

- preparing briefing books for committee members;
- procedures for broadcasting hearings and techniques for attracting and managing the media; and
- administrative arrangements.

Section three, “Conducting Hearings,” discusses how a hearing is held. Among other matters, it covers:

- quorum requirements;
- closing a hearing to the public;
- the rights of witnesses;
- opening statements by Members;
- introducing and swearing in witnesses;
- oral testimony by witnesses; and
- the question-and-answer period following oral testimony.

Finally, section four, “Post-hearing Activities,” describes activities committees often undertake following a hearing. For instance, committee staff may prepare a summary of testimony, prepare additional questions for witnesses, or print the hearing transcript along with supplemental materials.

Hearings in the Committee Process

Hearings are the broad information-gathering techniques committees use in policymaking and oversight. Congress benefits from hearings in a variety of ways. They inform Senators, staff, and the public about issues and legislative proposals, and orchestrate public support and attract visibility for an issue. They also serve to monitor government programs and activities, and expose problems Congress may seek to remedy. Finally, hearings give citizens an opportunity to participate in the policy process and help build a public record.

Senate committees hold hearings on measures or matters referred to them. Committees can also hold a hearing absent any specific legislation, as oversight, an investigation, or simply to inform.

For a number of reasons, Senate committees act on a relatively small portion of the measures introduced and referred to them. For instance, a committee often receives many proposals in the major policy areas within its jurisdiction, but ultimately chooses, if it decides to act, on only a limited number of measures in a policy area. When a committee does act, it can send a bill to subcommittee for initial consideration, although this is not required by Senate rules.

A committee may decide to send a bill to subcommittee for initial scrutiny because of the technical nature of the issue, the history of prior referrals, and political factors, among other reasons. When a committee or a subcommittee considers a measure, it generally may take four actions, as described below. Where a subcommittee initiates some of the four actions, the extent to which the full committee repeats these steps varies among committees, from issue to issue, and according to time and workload pressures. The sequence of actions assumes the committee favors a measure, but that can change and at any time the committee may discontinue action.

First, a committee may seek agency comment by sending a copy of the measure to the executive departments or agencies having relevant expertise, soliciting their written evaluation of the proposal. The executive agency typically sends the measure and draft comments to the Office of Management and Budget (OMB) to determine if it is consistent with the President's budget and legislative program.

Second, a committee may decide to hold one or more hearings. Further committee action without hearings is the exception, although committee hearings have sometimes been bypassed in order to move legislation more expeditiously, or because of action on a related bill in previous Congresses. The importance of the hearings stage is stated by congressional scholar (name redacted):

The decision to hold a hearing is often a critical point in the life of a bill. Measures brought to the floor without first undergoing the scrutiny of hearings will likely receive sharp criticism.... The importance of the committee stage is based on the assumption that the experts—the committee members—carefully scrutinize a proposal, and hearings provide a demonstrable record of that scrutiny.¹

Third, a committee may meet to “mark up,” or recommend amendments to the legislation, in part based on information received at hearings. Markup is the critical stage where a committee decides how the language of the bill should appear when it is presented to the Senate for consideration. While committee amendments must be ratified by the full Senate, committees have the important prerogative of shaping legislation prior to Senate floor consideration.

Fourth, the full committee may report the legislation to the Senate floor. When a committee reports a measure, it is common, but not required, to issue a written report that describes and explains a measure's purposes and provisions and presents the committee's case for the measure.

Types of Hearings

All hearings share common elements of preparation and conduct. Some of these are governed by Senate rules, particularly Senate Rule XXVI. At the same time, procedures and practices among committees may differ for a number of reasons.

First, each committee must adopt its own rules of procedure each Congress (Rule XXVI, paragraph 2). These must be consistent with Senate rules but may also expand or elaborate on them. Committee rules often contain provisions regulating hearings.

Second, customs not necessarily reflected in committee rules vary among committees. For example, committees differ in how they recognize Senators and accord them opportunities for questioning witnesses.

Third, hearings are held for different purposes. Depending on the purpose, hearings can be grouped into four broad classes: legislative, oversight, investigative, and confirmation. (Sometimes one may serve multiple purposes, e.g., both legislative and oversight).

¹ (name redacted), *Congressional Procedures and the Policy Process*, 7th ed. (Washington: CQ Press, 2007), p. 96.

Committees hold *legislative hearings* on policy issues that may lead to legislation. Sometimes a committee holds hearings on multiple measures before ultimately choosing one or more vehicles for further committee and chamber action. Hearings provide a forum where facts and opinions can be presented from witnesses with varied backgrounds, including Members of Congress and other government officials, interest groups, and academics, as well as citizens likely to be directly or indirectly affected by the proposal.

Oversight hearings review or study a law, issue, or an activity, often focusing on the quality of federal programs and the performance of government officials. Such hearings may also help ensure that the execution of laws by the executive branch complies with legislative intent, and that administrative policies reflect the public interest. Oversight hearings often seek to improve the efficiency, economy, and effectiveness of government operations. A significant part of a committee's hearing workload is dedicated to oversight. For example, on a single day, September 30, 2004, a subcommittee of the Senate Committee on Commerce, Science, and Transportation held an oversight hearing on Internet domain names; the Committee on Governmental Affairs held a subcommittee oversight hearing on college savings plans; and the Committee on Energy and Natural Resources held an oversight hearing on issues related to low-level radioactive waste. Many committees oversee existing programs in the context of hearings on related legislation, or routinely perform oversight when it is time to reauthorize a program, so oversight hearings may be combined with legislative hearings.²

Investigative hearings share some of the characteristics of legislative and oversight hearings. The difference lies in Congress's stated determination to investigate, usually when there is a suspicion of wrongdoing on the part of public officials acting in their official capacity, or private citizens whose activities suggest the need for a legislative remedy. Congress's authority to investigate is broad, and it has exercised this authority since the earliest days of the republic. Its most famous inquiries are benchmarks in American history: Credit Mobilier, Teapot Dome, Army-McCarthy, Watergate, and Iran-Contra. Investigative hearings often lead to legislation to address the problems uncovered. Judicial activities in the same area of Congress's investigation may precede, run simultaneously with, or follow such inquiries.

Confirmation hearings on presidential nominations are held in fulfillment of the Senate's constitutional "advice and consent" responsibilities. Senate standing committees hold confirmation hearings on presidential nominations to executive and judicial positions within their jurisdiction.³ These hearings often present an opportunity for oversight into the activities of the nominee's department or agency. Although the vast majority of confirmation hearings are routine, some are controversial.⁴

Similarly, the Senate, as required by the Constitution, must consent to the ratification of treaties negotiated by the executive branch with foreign governments. On June 17, 2004, for example, the Committee on Foreign Relations held a hearing on a series of law enforcement treaties. On March 23, 2004, the Committee on Environment and Public Works held a hearing on the United Nations

² See also CRS Report RL30240, *Congressional Oversight Manual*, by (name redacted) et al.

³ See also CRS Report RS20986, *Senate Confirmation Process: A Brief Overview*, by (name redacted); CRS Report RL31980, *Senate Consideration of Presidential Nominations: Committee and Floor Procedure*, by (name redacted); and CRS Report RL31948, *Evolution of the Senate's Role in the Nomination and Confirmation Process: A Brief History*, by (name redacted).

⁴ See also "The Confirmation Process" section in CRS Report RL30240, *Congressional Oversight Manual*, by (name redacted) et al.



A Practical Guide to Preparing and Delivering
Testimony Before Congress and Congressional
Hearings for Agencies, Associations, Corporations,
Military, NGOs, and State and Local Officials

By William N. LaForge

Testifying Before Congress

Convention on the Law of the Sea. Although not as numerous as confirmation hearings, these hearings also allow the Senate to meet its constitutional responsibilities in an important area of public policy.

Field hearings are congressional hearings held outside Washington. The formal authority for field hearings is found implicitly in the chamber rules. Senate Rule XXVI, paragraph 1 states that a committee “is authorized to hold hearings ... at such times and places during the sessions, recesses, and adjourned periods of the Senate” as it sees fit. In the 109th Congress, on May 2, 2005, the Committee on Indian Affairs held a hearing at the North Dakota state capitol on youth suicide prevention. Field hearings are often held in a geographic area where the subject matter of the hearing is particularly relevant. For example, on July 5, 2005, the Committee on Commerce, Science, and Transportation held a field hearing in Anchorage, Alaska on Alaska Aviation.

While field hearings may involve some matters different from Washington hearings, most of the procedural requirements are the same. Funding for committee travel, however, must meet regulations established by the Senate Committee on Rules and Administration.

Preparation for Hearings

Preliminary Issues

A committee considers a variety of issues in deciding whether to hold a hearing. A committee must define the information it needs, evaluate the policy matters or political message it wishes to communicate, and then determine whether a hearing is the best approach for achieving its goals. A hearing agenda is influenced by several factors, including the salience of issues to the nation, the committee chair’s agenda and goals, the importance of policies to interest groups, and matters of significance to the President, Senate leaders, and other Senators. Programs under a committee’s jurisdiction that need to be reauthorized generally receive committee scrutiny, as do instances of reported waste, fraud, or abuse.

Each committee receives dozens, sometimes hundreds, of proposals for possible examination, and may study matters not embodied in specific legislation. Given the context of its overall workload, a committee must decide whether holding a hearing is the best use of its resources. A committee must also consider whether and how a hearing would fit into its overall agenda. Committees with broad jurisdictions often struggle to allocate limited resources and balance the political and policy demands of its membership.

In order to obtain approval for a hearing, committee staff often prepare a preliminary hearing memorandum for the chair that includes information such as the scope and purpose of the hearing, the expected outcome, possible witnesses, how many hearing days are planned, and perhaps, the views of the minority party. Informal discussions with Members and committee staff may suffice for the hearing to move forward.

Sources of Outside Assistance

Numerous governmental and non-governmental resources are available to committees to assist with hearings. Given that most hearings focus on government programs, or potential programs, executive agencies often are major providers of information. Committees may request

information directly from specific offices, or may place requests through an agency's congressional liaison office, an office established to respond to congressional requests for information.

Each of the three congressional support agencies can assist with hearings in a variety of ways. The Congressional Research Service (CRS) can assist in

- framing the agenda for hearings;
- preparing background and policy studies;
- evaluating legislative proposals and discussing alternative approaches;
- making its experts available on a nonpartisan basis as witnesses;
- suggesting witnesses and drafting questions for Members to ask them;
- preparing studies or documentation for inclusion in the hearing record;
- analyzing testimony;
- supplying information on program accomplishments;
- providing information on positions of interest groups and other key players; and
- conducting database searches.

The Government Accountability Office (GAO) provides assistance to committees principally by reviewing executive branch programs through independent audits, investigations, and evaluations. These reviews measure the effectiveness of government programs. GAO's reports contribute to the background study and examination necessary for oversight hearings. For instance, reports on investigations of waste, fraud, and abuse in federal entities may be used at investigative hearings probing government programs, or at hearings to craft legislation to correct problems exposed. In addition to its routine, periodic reviews, GAO may be asked for studies specific to a committee hearing. GAO experts frequently appear as witnesses.

The Congressional Budget Office (CBO) furnishes Congress with key information relating to the U.S. economy, the federal budget, and federal programs. It assists committees by preparing cost estimates of legislation. Its assistance to Congress in carrying out the Congressional Budget Act provides a framework and useful background and analysis for hearings. Its responsibilities include

- estimating the five-year budgetary costs of legislation;
- tracking congressional budget actions against targets established in budget resolutions (scorekeeping);
- estimating costs to state, local, and tribal governments of carrying out mandates to be imposed by legislation;
- making periodic forecasts of economic trends and baseline projections of spending and revenue levels against which proposed changes in taxing and spending policies can be measured;
- conducting studies of programmatic or policy issues that affect the federal budget; and

- preparing an annual report on spending and revenue options for reducing the federal deficit.⁵

Non-governmental organizations (NGOs) provide a wealth of resources for committees. Knowledgeable individuals in universities, policy research institutes, law and consulting firms, and trade and other nonprofit associations often are willing to assist committees with data, analysis, and testimony. Interest groups with public policy concerns often become involved at the hearing stage in an attempt to frame the issues early in the legislative process. Studies indicate that lobbyists believe testifying at congressional hearings is an important and effective technique for influencing legislation. In addition to policy experts and special interest groups, committees often seek information and assistance from ordinary citizens who have direct experience with a proposed policy or agency, or whose lives will bear the impact of Congress's eventual decision.

Supplemental Staffing

Committees may find it useful on occasion to supplement their staff to assist with hearings. Committees may hire consultants or employ staff detailed from any government agency or department, in compliance with regulations promulgated by the Committee on Rules and Administration.

The services of individual consultants or organizations must be intermittent or temporary, not to exceed one year or the end of a Congress, whichever occurs first. A consultant must be selected jointly by the chair and ranking minority member of the committee needing such service. This committee then sends information on the qualifications of the consultant to the Committee on Rules and Administration. It is the responsibility of the Rules Committee to make certain that the consultant has unique qualifications for which the committee could not directly hire an employee, and the individual is not a current federal employee.

A committee seeking to have an employee detailed from a department or agency of the federal government must submit a letter to the Committee on Rules and Administration for approval. The committee also must submit a letter showing the concurrence of the agency or department in the detail, and information on the title and salary of the prospective detailee. The Rules Committee's review of this information includes a cost-benefit assessment. Committees may hire detailees on a reimbursable or a non-reimbursable basis.

Staff also may be available from the many fellowship, internship, and volunteer programs that place individuals with committee and Member offices. These programs provide staff ranging in expertise from high school and college students with little or no experience, to trained professionals and subject specialists. Finally, the Senate Office of Legislative Counsel assists in drafting a variety of legislative vehicles and documents, including bills and amendments. Attorneys in the office often work closely with committees during their consideration of legislation.

⁵ See also "Congressional Budget Office (CBO)" section in CRS Report RL30240, *Congressional Oversight Manual*, by (name redacted) et al.

Joint Hearings

Each panel has the discretion to hold hearings jointly with another committee or subcommittee. Panels meeting jointly must agree on common rules of procedure and determine logistical questions. In some instances, two Senate committees will meet jointly. For example, on July 14, 2005, the Committee on Indian Affairs and the Committee on Health, Education, Labor and Pensions held a joint hearing on Indian health care improvement. House and Senate panels also sometimes hold joint hearings. For example, the Senate Judiciary Subcommittee on the Constitution and the House Judiciary Subcommittee on the Constitution, Civil Rights, and Civil Liberties held a joint hearing on March 11, 2009, on proposed constitutional amendments regarding the filling of vacancies in the Senate.⁶

Some observers view joint committee sessions as an efficient use of time and resources. Joint hearings bring together expertise and differing perspectives. They may reduce the difficulties and delays that arise from contradictory actions and proposals. Joint committee sessions, however, tend to be infrequent. Some Members believe that separate perspectives and approaches provide significant benefits to Congress. Separate hearings increase avenues of access for witnesses, and opportunities for influence and exposure for committee members and leaders. Further, coordinating meeting times between two panels may present scheduling difficulties.

Restrictions on Meeting

Senate rules place limitations on when committees may meet. A standing committee and its subcommittees are authorized to meet and to hold hearings when the Senate is in session as well as when it has recessed or adjourned (Rule XXVI, paragraph 1). A committee may not meet, however, on any day after the Senate has been in session for two hours, or after 2:00 pm when the Senate is in session (Rule XXVI, paragraph 5(a)). This restriction is designed to minimize overlap of committee and floor sessions and so allow fuller participation in floor debates, reduce interruptions of committee deliberations with floor votes, and lessen scheduling conflicts for Senators.

The Committees on Appropriations and the Budget are exempt from this prohibition. In practice, the rule is frequently waived for other committees by unanimous consent, or joint agreement of the majority and minority leaders or their designees. Whenever the prohibition is waived, the majority leader (or his designee) announces on the floor, usually at the beginning of the day, the time and place of the meeting.

Senate rules also restrict committees to meeting during specified time periods (Rule XXVI, paragraph 6). Specifically, a committee may meet: (1) in the morning, until 11:00 a.m.; or (2) from 11:00 a.m. until 2:00 p.m. This rule is intended to minimize problems associated with simultaneous floor and committee sessions, as well as with overlapping committee sessions. In practice, committees do not always adhere rigorously to these restrictions.

⁶ It is also not uncommon for two subcommittees of the same parent committee to hold joint hearings. For example, on October 27, 2009, the Domestic and Foreign Marketing, Inspection and Plant and Animal Health Subcommittee and the Production, Income Protection and Price Support Subcommittee of the Senate Agriculture, Nutrition and Forestry Committee held a joint hearing on falling dairy prices.

Scheduling

The committee chair generally controls the schedule, though any Senator may seek to persuade a committee to hold hearings. Paramount in scheduling for many committees is choosing a date and time convenient for committee leaders. The Senate's automated system (available on the Senate's Webster Internet page) allows committees to coordinate their schedules to avoid meeting overlaps. The consolidated hearing schedule is posted on the Senate's website at http://www.senate.gov/legislative/legis_legis_committees.html.

Notice

Under Senate rules, committees must publicly announce the date, place, and subject of each hearing at least one week in advance (Rule XXVI, paragraph 4(a)). The Committees on Appropriations and the Budget are exempt from this rule. The rule may be waived if the committee determines that there is "good cause" to hold a hearing at an earlier date. Notices of hearings appear in the Daily Digest section of the *Congressional Record*, in reports by the Senate's automated committee scheduling service, and on the Senate's website.

Committee rules show some variation on the Senate rule. For example, the rules of the Committee on Environment and Public Works state that hearings held with less than a week's public notice require the concurrence of the ranking minority member, and in any case, notice must be made at least 24 hours in advance of the hearing. The Committee on Agriculture, Nutrition, and Forestry permits hearings with less than a week's public notice if the committee or subcommittee chair determines that the hearing is noncontroversial or that "special circumstances" require swift action, and a majority of the committee or subcommittee concurs. The rules of the Committee on Health, Education, Labor and Pensions contain an addendum with additional hearing guidelines requiring the full committee and its subcommittees to provide each member of the committee with the time, place, and subject matter of the hearing seven days prior to the public notice of a hearing as well as a list of witnesses three days in advance.

A standing order of the Senate requires each Senate committee to notify the Office of the Senate Daily Digest of the *Congressional Record* immediately when any committee hearing or meeting is scheduled (Title IV of S.Res. 4, 95th Congress). The information should include the time, place, and purpose of the session. Committees must provide the daily digest office with any changes in the information or cancellations of sessions as soon as they occur. Every Monday and Wednesday, this information is published in the extensions of remarks section of the *Congressional Record*.

Choosing and Inviting Witnesses

In choosing witnesses, committees pay careful attention to the viewpoints that are heard, who should testify, and the order and format for presenting testimony.

In some cases a committee strives to assure that all reasonable points of view are represented, while in other cases witnesses expressing only particular points of view are invited. Senate rules allow the minority party members of a committee to call witnesses of their choice on at least one day of a hearing, when the chairman receives a request from a majority of the minority party members before the completion of the hearing (Rule XXVI, paragraph 4(d)). The Committee on Appropriations is exempt from this rule. In lieu of this formal option, the minority sometimes works informally with the majority to invite witnesses representing its views.

To testify, a witness must be invited by the committee. Before officially inviting a witness, committee staff identify, and often interview, prospective candidates. When appropriate witnesses are found, the committee chair commonly sends a formal letter of invitation. This letter gives the witness some basic information, including the purpose, subject, date, time, and place of the hearing. In addition to specifying the portion of a measure or issue the witness should address, the letter might contain a limitation on the length of the witness's oral testimony.

The committee may send the witness additional information. This information may include a list of committee members, the committee's rules, the measure under consideration, and press articles relating to the issue. A staff contact is indicated. Staff sometimes meet with witnesses before a hearing to answer questions and to review procedure.

A Senate standing order authorizes reimbursement for *per diem* expenses of witnesses (S.Res. 259, 100th Congress). The actual expense basis for reimbursement generally cannot exceed the daily rate set by the Committee on Rules and Administration although the committee may consider deviations from this policy on a case-by-case basis. A committee also may reimburse a witness for travel expenses related to testimony. If reimbursement is expected, the letter of invitation may address this. Usually a witness is reimbursed only in hardship circumstances, and then only for expenses related to transportation from the witness's place of residence to the hearing and return.

Advance Written Testimony

A letter of invitation also may request that the witness send the committee biographical information and an advance copy of written testimony. Senate rules require each witness to file an advance copy of written testimony with the committee at least one day before an appearance at a hearing (Rule XXVI, paragraph 4(b)). The Committee on Appropriations is exempt from this rule. A committee chair and ranking minority member can determine the circumstances whereby advance copies of testimony need not be filed.

Various committee rules cover how far in advance of the hearing witnesses' testimony should be filed, usually between 24 and 72 hours; the rules also cover any requirements for multiple copies. For example, the Committee on Foreign Relations requires witnesses to file with the committee 48 hours in advance of an appearance at a hearing, whereas the Committee on Veterans' Affairs requires 40 copies of testimony to be filed 48 hours in advance.

Senate committee leaders have authority to decide when it is impractical to require advance written testimony. Precipitating national or international events may require immediate congressional attention, and individuals may be needed to testify on very short notice. In such cases, committees can waive the requirement for written testimony. Most of the time, however, committees are rigorous about receiving advance copies of testimony. Committees may want to summarize or outline testimony, draft questions tailored to each witness's statement, and photocopy the statement for distribution to the press and others.

Format and Order of Witness Testimony

Committees determine the format and order of presenting witnesses. It is common practice to request witnesses to limit their oral remarks to a brief summary of their written testimony. Usually, a witness's complete remarks are included in the hearing record. Traditionally, after their



The House of Representatives and Senate Explained

Congressional Procedure

A Practical Guide to the Legislative Process in the U.S. Congress

Richard A. Arenberg

opening remarks, the witness takes questions from Members before a second witness testifies. In recent years, committees have used different formats. One common approach presents multiple witnesses with diverging viewpoints as a panel. It is practice in these cases for all the panel members to make statements, then for committee members to pose questions to the panel. Some observers believe that this format produces a more stimulating debate and more effectively elicits pertinent information. Committees have experimented with several other formats for gathering information, including seminars, roundtable debates, and, more experimentally, video conferencing and the Internet.

The order in which witnesses testify is also determined by the committee. Protocol dictates that a Member of Congress generally testifies before other witnesses, and a similar privilege often is extended to high-ranking executive branch officials and to former Representatives or Senators and other high-level government officials. Celebrity witnesses, because they often generate media and public attention, are carefully positioned. Academics, government officials, representatives from interest groups, and other private citizens are arranged in a way that most favorably presents information and communicates the policy and political intentions of the committee. For example, a committee may arrange its witnesses to allow individuals to refute or counter arguments made by another witness.

Subpoenas and Depositions

Most individuals respond favorably to an invitation to testify, believing it to be a valuable opportunity to communicate and publicize their views on a question of public policy. If a person will not come by invitation alone, however, a committee or subcommittee may require an appearance through the issuance of a subpoena (Rule XXVI, paragraph 1). Committees also may subpoena correspondence, books, papers, and other documents. Subpoenas are issued infrequently, and most often in the course of investigative hearings.

Senate Rule XXVI, paragraph 1, broadly authorizes committees to issue subpoenas to require appearances by witnesses or the production of material. Each committee's rules further delineate the procedure. Some committees delegate authority for subpoenas to the chair or the chair's designee. Other committees require a majority vote of the committee. Still other committees have more detailed procedures for authorizing subpoenas. The chair of the Committee on Agriculture, Nutrition, and Forestry is authorized to issue a subpoena with the approval of the ranking minority member. The chair, however, may authorize a subpoena without such approval if the chair does not receive notification from the ranking minority member within 72 hours, excluding Saturdays and Sundays. Even if the ranking minority member disapproves, the subpoena may yet be authorized by vote of the committee. The Committee on Small Business requires the consent of the Ranking Minority Member, or a majority of the committee members, and the rule provides that "Such consent may be given informally, without a meeting," but it must be in writing. The Select Committee on Intelligence requires that each subpoena be accompanied by a copy of the resolution authorizing the establishment of the committee and a copy of the committee's rules.

A committee requiring a subpoena can obtain the appropriate form from the Office of Legal Counsel. Subpoenas usually are delivered by authorized committee staff or by a U.S. Marshal. Compliance with a subpoena can be enforced only at the direction of the Senate. There are three methods of enforcing a subpoena. The first is called a inherent contempt hearing of the full Senate. The second method of enforcement allows a committee to report a resolution citing for contempt an individual who did not respond to a subpoena. If approved by the Senate, the resolution would be sent to the Office of the U.S. Attorney for prosecution. Finally, for matters

involving civil contempt, a committee could report and the Senate adopt a resolution allowing the Senate Legal Counsel to obtain a court ruling deciding whether an individual must comply with a subpoena.

Committee staff commonly consult with experts to gather information in preparation for a hearing. A more formal means of obtaining information, for investigative hearings in particular, is through the use of depositions. Under this method, committee staff will commonly take testimony in private, either from individuals who later appear as witnesses or from those who do not testify publicly. The testimony is sometimes taken under oath, and a transcript may be prepared. Individuals often are accompanied by counsel, and respond to prepared questions.

As Senate rules do not expressly authorize depositions by staff, on occasion the Senate has granted specific authority for such action by resolution. The committee then usually adopted procedures for taking depositions. As one example, the Senate approved a resolution authorizing committee staff to take depositions in the investigation of the Whitewater Development Corporation and related matters (S.Res. 229, 103rd Congress).

Most committee rules are silent on the matter of depositions. The Committee on Foreign Relations provides that, “At the direction of the Committee, staff is authorized to take depositions from witnesses.” Questions have been raised however, that, since staff depositions are usually authorized only by Senate resolution, the committee’s rule might be open to challenge. The Committee on Homeland Security and Governmental Affairs provides comprehensive procedures for taking depositions because of the committee’s broad oversight and investigative authority.

Briefing Books

Staff often prepare summary and background material for Senators’ use before and during a hearing. This information is sometimes assembled into briefing books, or folders, to present issues in a systematic, uniform way. Briefing books can include a variety of items, including a description of the subject, scope, and purpose of the hearing. For legislative hearings, a copy and an explanation of each measure under consideration, and a comparison of all measures to be discussed, are useful. Pertinent statutes and regulations, court decisions, press articles, agency reports, academic studies, and a chronology of major events also may be included. To assist Senators with witnesses, briefing books might contain a list of witnesses in their order of appearance, a copy or summary of written testimony, and biographical information. Briefing books frequently contain questions or talking points for Senators to use in opening statements and in examining witnesses.

Before a hearing, committee staff sometimes brief Senators and their staff. Staff can conduct oral briefings in addition to, or in lieu of, preparing briefing books. These sessions provide an opportunity to discuss matters of particular interest to individual committee members.

Publicity and Media Considerations

A committee’s goal in holding a hearing often is broader than collecting information for policy development. It can include publicizing an issue or problem to focus attention and build support for an issue in broad or narrow areas of the public. Exposure of a problem at an oversight or investigative hearing can be a particularly effective technique. Public officials often seem responsive to correcting program deficiencies when an issue has been broadly publicized.

Senate Rule XXVI, paragraph 5(c), authorizes committees to broadcast hearings that are open to the public, but leaves to committees and subcommittees development of procedures. The rules of some committees, for example, Agriculture, Nutrition, and Forestry; Judiciary; and Rules and Administration, are silent on broadcasting, and committee practice and decisions of the chair largely determine how hearings are broadcast.

Some committees provide minimal formal guidance. For example, the Committee on Appropriations provides that if a member of an Appropriations subcommittee objects to photography or broadcasting of an open hearing, the matter is referred to the full committee for a decision. The rules of the Committee on Energy and Natural Resources provide that the media must position their equipment so as not to block staff or Senators or otherwise interfere with the “orderly process” of the hearing.

Other committees have more fully developed rules. The Committee on Finance requires that a hearing broadcast must be approved by the committee chair following a request filed with the staff director by noon of the day before the hearing. The Committee’s rules also cover installation of broadcasting equipment and additional lighting in the hearing room. Select Committee on Ethics rules require that personnel providing broadcast coverage be accredited by the Radio and Television Gallery, and that photographers be accredited by the Press Photographers Gallery.

Committee press aides usually are responsible for planning media coverage for a hearing, and they typically employ a number of techniques for attracting and managing the media. In some cases, press aides in Senators’ personal offices take similar actions on behalf of individual and committee members. Often, an early objective is to seek the assistance of the Senate Daily Press Gallery, the Periodical Press Gallery, the Radio and Television Gallery, and the Press Photographers’ Gallery. The mission of the gallery staffs is not only to facilitate coverage of Senate activities on behalf of the media, but also to assist committee members and staff with their media responsibilities. Gallery staff can assist committees in a variety of ways, by distributing press releases and witness statements, resolving differences involving camera crews, and making pool arrangements for maximum television coverage.

Some committees routinely mail calendars informing the media of upcoming events. The information typically includes a list of hearings and a description of each, emphasizing why the hearing is important. For each hearing, these calendars provide the date, time, and location, as well as a staff contact.

Press releases are a standard format for informing journalists of newsworthy committee activities. In addition to a committee’s press list, press releases also can be distributed to committee and personal offices and the Senate press galleries. The Radio and Television Gallery requests 25 copies of news releases, notices of committee meetings and hearings, and notices of press conferences. The Senate Daily Press Gallery suggests 50 copies of press releases. The Periodical Press Gallery requests 10-15 copies of press releases. Language from press releases can be used to draft “Dear Colleague” letters and statements for use in committee and on the Senate floor.

Committee staff often prepare media packets prior to hearings. The packets can include a variety of material, such as statements by the committee chair and other members, a list of witnesses and copies of written testimony, and background material such as press clippings and support agency studies.

As the day of a hearing approaches, reporters often will seek out staff for information. Many committees prefer that journalists' discussions with staff be "on background" and not for attribution. Speaking for attribution usually is limited to committee members.

Press conferences are a common technique for personally informing journalists of issues in an upcoming hearing, and for clarifying issues immediately following a hearing. Some Senators prefer to meet informally with reporters, others prefer a more structured environment. Formal press conferences may be held in the multi-media studio in room S-325 in the Capitol. Press secretaries are advised to contact the Radio and Television Gallery staff in advance to ensure that the desired studio time is available. According to the 2006 edition of the *U.S. Senate Handbook*,⁷ only members of the press can reserve studio time, and press secretaries should contact an accredited member of any congressional media gallery to secure an invitation to the studio. Ordinarily, only Members of Congress may be interviewed in the studio. Exceptions must be authorized by the executive committees of the congressional galleries.

When a studio appearance is scheduled, a notice is posted through the Senate electronic bulletin board and displayed in all of the congressional media galleries. Senators also may schedule appearances in the Senate Daily Press Gallery, although television cameras are not permitted there. These appearances do not require an invitation from members of the press.⁸

In recent years, committees have publicized their hearings on their committee websites (see http://www.senate.gov/pagelayout/committees/one_item_and_teasers/committee_hearings.htm). Links from a committee's home page lead to sites related to committee hearings. Some committees provide a list of hearings, dates, and witnesses (see, for example, the site of the Finance Committee at <http://finance.senate.gov/sitepages/hearings.htm>). Others include statements by Senators and witness testimony. The website of the Committee on Commerce, Science, and Transportation provides links to live webcasts of upcoming hearings (see http://www.senate.gov/pagelayout/committees/d_three_sections_with_teasers/committees_home.htm).

Administrative Matters

Dozens of administrative arrangements need to be made before a hearing, and these usually are handled by a committee's administrative staff. Two important matters are reserving a hearing room and arranging early in the planning stage for a reporter of debates. If a committee's own hearing rooms are unavailable, a committee may request a room from another committee or Senate office. While rooms may be occupied or administered by other offices or committees, they are subject to the Rules and Administration Committee's policies for the use of Senate rooms.

Senate committees are authorized to hire reporters of debates and other stenographic assistance from private firms. Pursuant to 2 U.S.C. 68c, the Committee on Rules and Administration determines the rate of pay for these services and provides guidelines for their employment. The committee's regulations are available from the committee.

⁷ U.S. Senate Handbook, Washington: GPO, 2006, Appendix I-N.

⁸ See also "Communicating with the Media" section in CRS Report RL30240, *Congressional Oversight Manual*, by (name redacted) et al.

Under a new rule, adopted by the Senate in the 110th Congress, all committees and subcommittees must take care to obtain either a video or audio recording or a transcript of the hearing, which must be available on the Internet no later than 21 business days after the event occurs (this rule applies to business meetings as well). This rule does not apply if the hearing is closed or if the committee or subcommittee obtains a waiver from the Senate Committee on Rules and Administration based on “technical or logistical reasons.” Such transcripts and recordings are to remain available until the end of the Congress following the meeting.⁹

Many administrative details concern the physical setup of the hearing room. These include arranging items on the dais such as nameplates, writing materials, water, and ice; supplying the chair with a gavel, block, and timer; providing the chair and other members with materials not included in the briefing books, such as copies of committee and Senate rules; reserving seats for the press, staff, witnesses, or other individuals; and arranging for audio consoles, microphones, and lighting. If necessary, security during the hearing can be provided by the Capitol Police. Sufficient copies of materials, such as statements of Senators and witnesses, should be provided for distribution during the hearing.

Field Hearings

A field hearing presents administrative and planning considerations different from those for Washington hearings. These include identifying the city, district or state and the specific location, for example, a federal building, school or private venue, where the hearing will be held. It may be necessary for staff to travel to the field location a day or more before the hearing to make certain arrangements are to the committee’s satisfaction, including the specific layout of tables and chairs for Senators, witnesses and the public, and the availability of a sound system and the technicians to operate it. Security personnel also need to be arranged.

Funding for committee travel must meet regulations established by the Rules and Administration Committee and compiled in Appendix IV, section III, of the of the *U.S. Senate Handbook*. Of particular importance to a committee holding a field hearing is section IV-D, “Hearing Expenses.” This section authorizes committees under certain conditions, to pay the expenses of official reporters for travel to the site of the field hearing.

Where field hearings involve oversight of a federal agency, it may be possible, under a committee’s oversight authority, to request that the agency provide transportation for committee members and staff. Usually, such requests require a letter from the committee chairman to the agency head. Expenses incurred by a Senator or staff aide attending a field hearing—including transportation, lodging, meals and incidentals such as parking charges—are reimbursable by the committee holding the hearing. Automobile rentals are also reimbursable, providing the car is only used to transport Senators and committee or personal staff authorized by the committee for travel. For other matters relating to expenses and reimbursement for travel to and from a field hearing, staff should consult Senate regulations or the Rules and Administration Committee.

⁹ This is the new section to the Senate’s Standing Rule XXVI, 5(e)(2), also found in sec. 513 of P.L. 110-81, formerly S. 1, *The Honest Leadership and Open Government Act of 2007*, enacted on September 14, 2007.

Conducting Hearings

As discussed above, hearings involve considerable preparation. By the day of the hearing, Senators and staff expect that important requirements of Senate rules, such as publicly announcing hearings, have been met. Critical decisions, such as choice of and format for presenting witnesses, have been made. Necessary research has been conducted, and relevant materials assembled in a briefing book. Briefings may have been conducted for Senators, staff, witnesses, and the press. Administrative issues, such as arranging for a reporter of debates, have been addressed. With thorough and careful preparation, most hearings can be expected to proceed routinely. Senators and staff sometimes confront unanticipated events that require a change in plans, such as a need to call additional witnesses or to close a session to the public.

Quorums

Each committee can determine the number of members required for taking testimony in hearings (Rule XXVI, paragraph 7(a)(2)). With few exceptions, Senate committees allow one Senator to take sworn and unsworn testimony. For instance, the Committee on Appropriations permits one Senator to take unsworn testimony, but sworn testimony requires three Senators. However, one Senator is sufficient to take sworn testimony at an Appropriations subcommittee hearing. The Committee on Armed Services requires three Senators to take sworn testimony, one of whom must be from the minority party, unless a majority of the committee orders otherwise. The Committee on Health, Education, Labor and Pensions allows one Senator to conduct a hearing, with the approval of the chair. In order to take sworn testimony, however, three members of the committee are required; although, with the concurrence of the chairman and the ranking minority member, one Senator may hear subpoenaed witnesses or take sworn testimony. The Committee on Rules and Administration requires two Senators to take sworn testimony and one Senator to hear unsworn testimony, though once a two-person quorum has been established, a single member may continue taking testimony.

Committee staff often poll Senators before the start of a hearing to determine which members plan to attend. Sometimes staff also obtain information on where Senators can be reached, in case they are needed to meet the quorum requirement.

Closing a Hearing

The vast majority of committee hearings are open to the public, as required under Senate rules. A hearing, like other committee meetings, may, however, be closed for specific reasons stated in Senate rules (Rule XXVI, paragraph 5(b)).

A committee may close a hearing if it (1) involves national security information; (2) concerns committee personnel, management, or procedures; (3) invades the personal privacy of an individual, damages an individual's reputation or professional standing, or charges an individual with a crime or misconduct; (4) reveals identities or damages operations relating to law enforcement activities; (5) discloses certain kinds of confidential financial or commercial information; or (6) divulges information that other laws or regulations require to be kept confidential.

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The Senate rules also contain a specific procedure for closing a hearing. By motion of any Senator, if seconded, a committee may close a session temporarily to discuss whether there is a need to close a hearing for any of the reasons stated above. If so, the committee can close the hearing by majority roll call vote in open session. By this procedure, a committee can close a hearing or a series of sessions on a particular subject for no more than 14 calendar days.

Witness Rights

No witness may refuse to testify on the grounds that such testimony “may tend to disgrace him or otherwise render him infamous” (2 U.S.C. 193). Witnesses at Senate hearings receive protections mainly through their rights under the Constitution, and rules adopted by individual committees. Constitutional protections include the First, Fourth, and Fifth Amendments. While committees may seek documents from witnesses, the Fourth Amendment prohibits unreasonable search and seizure to obtain information. The First Amendment protects witnesses who may seek to refuse compliance with a committee subpoena by claiming that the committee has infringed on the witness’s right to free speech, assembly, or petition. Under the Fifth Amendment protection against self-incrimination, witnesses cannot be compelled to give evidence against themselves unless granted immunity.

Among committee rules, several provide witnesses with a right to counsel. The Committee on Homeland Security and Governmental Affairs allows counsel to be present and to advise witnesses of their legal rights. If a witness is an “officer or employee of the government, or of a corporation or association,” the chair may determine that representation by counsel from the government, a corporation, or an association representing other witnesses creates a conflict of interest and may order that the witness be represented by committee staff or by personal counsel. Several Senate committees have rules that prohibit the release of confidential testimony unless it is authorized by a majority of the committee. The Finance Committee gives witnesses the right to request that cameras be turned off if they do not wish to be televised while testifying.

Opening Statements

When present, a committee’s chair ordinarily presides over its hearings. Senate rules stipulate that in the absence of the chair, the ranking member of the majority party is authorized to preside (Rule XXVI, paragraph 3). The rules of several committees provide that if neither the chair, ranking majority member, nor any other member of the majority is present, then the ranking minority member present may preside. The Committee on Homeland Security and Governmental Affairs provides that if the chair or his designee is absent 10 minutes after the scheduled time of the hearing, then the ranking majority member present can preside. If no member of the majority is present, then, with prior approval of the chair, the ranking minority member present may open and conduct the hearing only until a member of the majority arrives.

To begin the hearing, the chair commonly makes an opening statement introducing the subject and purpose of the session. The chair may describe important events leading to the hearing and key contemporary issues. He or she also may outline the committee’s approach to the issue; a procedure for interruptions, such as for roll call votes; and the schedule of future hearings. When finished, the chair generally recognizes the ranking minority member to make an opening statement, and may then recognize other Senators.

Since debate time in the Senate is generally unrestricted, Senators recognized for opening statements may, under the rules, speak as long as they wish. The chair may, however, request that in the interest of time, Senators limit the length of their statements.

Introducing and Administering the Oath to Witnesses

Following opening statements, the chair customarily introduces each witness in accordance with the arranged order and format. In some cases, for example a home state witness, a committee member other than the chair might introduce the witness.

A procedure for administering an oath for sworn testimony to witnesses is not addressed in Senate rules, although by statute any Senator is authorized to administer an oath to a committee witness (2 U.S.C. 191). Most committee rules provide further guidance in this area. Commonly, committee rules provide that an oath may be administered when the chair or ranking minority member deems it necessary, as with the Select Committee on Intelligence. The Select Committee on Ethics requires that all witnesses testifying at adjudicatory hearings be sworn unless the Senator presiding decides otherwise. In practice, most other committees rarely require testimony under oath. Swearing witnesses is most common at investigative hearings and hearings dealing with sensitive subject matter. Sometimes witnesses at confirmation hearings are also sworn in.

Oral Testimony of Witnesses

Senate rules do not limit the time allowed for witnesses to present oral testimony. In practice, some committees cap the time allowed for witnesses to make their presentations. Since witness testimony generally is available to the committee in advance, and in the interest of time, it is usually not necessary or desirable for a witnesses to read their entire prepared statement. The rules of several committees, including Banking, Housing and Urban Affairs; Finance; and Foreign Relations, limit oral presentations to ten minutes. The Select Committee on Intelligence rules state that oral presentations shall “not exceed a reasonable period of time as determined by the Chairman, or other presiding members.”

Some committees employ a system of lights to guide witnesses in their oral presentations. A green light tells the witness that time remains to continue a presentation. A yellow light warns the witness to begin to conclude oral testimony, and a red light informs the witness that the presentation should end.

Time Limitations for Questioning Witnesses

The question and answer period that follows a witness’s statement presents an opportunity for Senators to clarify assertions made in testimony, to expand upon witness statements, and sometimes to question the veracity of statements. Moreover, it offers an opportunity for the committee to build a public record and to obtain information to support future committee actions. Committee staff sometimes prepare questions or talking points for committee leaders and other members. In some cases, witnesses may be informed in advance of the line of questioning the committee intends to pursue.

Under Senate rules, when recognized, a Senator may, in general, speak as long as he or she wants. Most committees do not restrict this right of debate for questioning witnesses. Several

committees, however, have imposed a rule limiting Senators to five minutes to question each witness until all committee members have had the opportunity. These include Agriculture, Nutrition and Forestry; Energy and Natural Resources; and Select Indian Affairs. The Committee on Banking, Housing and Urban Affairs limits questions to each witness to five minutes when five or more Senators are present, and 10 minutes when fewer than five are present. Where committee rules are silent on this procedure, the chair or Senator presiding commonly sets ground rules for questioning either at the start of the hearing or after a witness's oral presentation. Whatever the stated procedures, committee leaders generally seek to accommodate Senators during the question period.

Order of Questioning Witnesses

Each committee has the discretion to determine the order in which members may question witnesses. A common procedure allows alternating between the parties, in order of seniority. By contrast, the so-called "early bird rule" permits members to question witnesses based on Senators' order of arrival at the hearing. Some committees, for example, Agriculture, Nutrition, and Forestry, authorize the use of either of these methods. In practice, committee chairs can entertain requests to proceed out of order to accommodate the schedules of individual Senators.

Questioning by Committee or Subcommittee Staff

Both Senate rules as well as those of most committee are silent on the matter of the use of staff to question witnesses. Unless specified by committee rule, it is commonly the prerogative of the chair, often in consultation with the ranking minority member, to determine the circumstances under which staff may question witnesses. The Committee on Small Business specifically permits such a procedure. The Committee on Energy and Natural Resources and the Committee on Indian Affairs allow the committee leadership to appoint one staff member to question witnesses. Staff may only question witnesses after all Senators have completed their questioning, or at other times agreed upon by the committee leadership. The rules of the Permanent Subcommittee on Investigations of the Committee on Homeland Security and Governmental Affairs state that witnesses may be questioned by "authorized" subcommittee staff.

Post-hearing Activities

At the end of the question and answer period, the committee chair will close the hearing. The chair may summarize what the committee has accomplished by holding the hearing and comment on the future committee schedule or expected action.

Senate rules provide a procedure whereby a committee may direct its staff to prepare a daily digest of the written statements submitted by witnesses. A committee can also ask its staff to prepare daily summaries of the oral testimony presented before the committee on a particular day (Rule XXVI, paragraph 4(c)). With the approval of the chair and ranking minority member, the committee can include the latter summaries in its published hearings. Summaries can be distributed to committee members and the press.

Follow-up questions may be prepared and submitted to witnesses for written replies to expand on their testimony. Witnesses may be asked to expand on answers given at the hearing or to discuss new matters raised in the course of the hearing. Often the chair will announce that the hearing

record will be left open for a period of time so that additional information can be entered into the formal hearing record. If the hearing is investigative, the committee can prepare and issue its report. If the hearing is legislative, the committee may proceed to markup and report a measure to the Senate floor. Finally, committees attend to administrative details following a hearing, such as restoring the hearing room to its original condition and sending thank-you letters to witnesses.

Points of order against actions that occurred during a committee hearing are normally ruled upon by the Chairman. In any case, pursuant to Senate rules (Rule XXVI, paragraph 7(a)(3)), no point of order for a violation of committee hearing rules will be entertained subsequently on the Senate floor if a measure has been properly reported. This rule states in part, “Action by any committee in reporting any measure or matter in accordance with the requirements of this subparagraph shall constitute the ratification by the committee of all action theretofore taken by the committee with respect to that measure or matter...” Thus, if a Senator believes a hearing was conducted improperly, he or she must make this belief known in committee, and the point of order must be timely raised. Once the measure reaches the Senate floor, a point of order because of procedural infractions during the hearing would not be sustained.

Printing Hearings

Although they are encouraged to do so, Senate committees are not required to print their hearings. Many hearings are printed. Senate Rule XXVI, paragraph 10(a) provides the authority for committees to print their hearings. The rule also requires that committee hearings be kept separate from the personal office of the committee chairman, that hearings transcripts and related material become the property of the Senate, and all committee members and all Senators are entitled to access to the hearing records.

Senate Rule XVII, paragraph 5 requires that measures reported to the Senate cannot be considered unless a report accompanying that measure has been available to Members for at least two calendar days. The rule further requires that if hearings have been held on the reported measure, the committee reporting the measure must make “every reasonable effort” to have the hearings printed and available to Senators.

Some committees provide for review by witnesses of their testimony for the purpose of determining errors in transcription, grammatical corrections or obvious errors of fact. A request to actually change the transcript must be made to the committee chair or staff member designated by the chair. Several committees allow witnesses themselves to make minor grammatical changes. The rules of the Select Committee on Ethics require that, except where a hearing has been closed to the public, transcripts be published “as soon as practicable.” The chair and vice chair, acting jointly, are authorized to order a transcript printed without corrections by a Senator or other witness if they determine that the time allotted for review of the transcript has expired and the transcript has not been returned to the committee.

Bibliography

Aberbach, Joel D. *Keeping a Watchful Eye: The Politics of Congressional Oversight*. Washington: The Brookings Institution, 1990.

- Aberbach, Joel D. "What's Happened to the Watchful Eye?" *Congress and the Presidency*, vol. 29, no. 1 (spring 2002), pp. 3-23.
- Cohen, Richard E. "Crackup of the Committees." *National Journal*, vol. 13, (March 13, 1999), pp. 688-692.
- DeGregorio, Christine. "Leadership Approaches in Congressional Committee Hearings." *Western Political Quarterly*, vol. 45 (December 1992), pp. 971-983.
- Harvey, Thomas E. "Congressional Testimony: A Practical Guide for Newcomers to the Congressional Hearing Process." *Federal Bar News & Journal*, vol. 35 (November 1988), pp. 414-415.
- Hill, James P. "The Third House of Congress Versus the Fourth Branch of Government: The Impact of Congressional Committee Staff on Agency Regulatory Decision-Making." *John Marshall Law Review*, vol. 19 (winter 1996), pp. 247-273.
- Lustberg, Arch. *Testifying with Impact: A "How to" Booklet for Those who Testify on the Federal, State, or Local Levels of Government*. Washington: Association Division, U.S. Chamber of Commerce, 1982.
- Mackenzie, G. Calvin. *The Politics of Presidential Appointments*. New York: The Free Press, 1981.
- Oleszek, Walter J. "Preliminary Legislative Action," *Congressional Procedures and the Policy Process*, 7th ed., pp. 78-112. Washington: CQ Press, 2007.
- The Presidential Appointee's Handbook*, 2nd ed. Washington: National Academy of Public Administration, 1988.
- Schneier, Edward V. and Bertram Gross. "Committee Action or Inaction," *Congress Today*, pp. 381-409. New York: St. Martin's Press, 1993.
- Sinclair, Barbara. *Unorthodox Lawmaking: New Legislative Processes in the U.S. Congress*. Washington: CQ Press, 2000.
- Unekis, Joseph K. "Committee Hearings." In Donald C. Bacon, Roger H. Davidson, and Morton Keller, eds., *The Encyclopedia of the United States Congress*, vol. 1, pp. 423-426. New York: Simon and Schuster, 1995.
- U.S. General Accounting Office. Office of Special Investigations. *Investigators' Guide to Sources of Information*. Washington: GPO, 1997.
- Wells, William G. Jr. "Hearings and Testimony." *Working with Congress: A Practical Guide for Scientists and Engineers*, pp. 87-98. Washington: American Association for the Advancement of Science and Carnegie Commission on Science, Technology, and Government, 1992.

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