



Inside Oversight: Levin Center at Wayne Law Tutorials

SERIES 1 CONDUCTING AN INVESTIGATION

Tutorial: Developing an Investigative Plan

In this video, Levin Center experts offer tips and advice on how to draft a written plan to conduct a Congressional investigation.

Instructors

Elise Bean, Former Staff Director and Chief Counsel
Zack Schram, Former Senior Counsel, U.S. Senate Permanent
Subcommittee on Investigations

Transcript

Elise: Hi. I'm Elise Bean and this is Zack Schram, and we're here to share with you some tips we've learned over the years on how to develop an investigative plan for a Congressional investigation. Both of us conducted oversight investigations for Senator Carl Levin on the Permanent Subcommittee on Investigations in the U.S. Senate.

Zack: Once you've been assigned an investigation, the next step is to figure out exactly how you are going to get the work done. We've found the best way to begin is to develop a written investigative plan. It's a lot easier and quicker than you may think.

Identifying staff, time, and resources

Elise: Tip Number One: Identify upfront the staff, time, and resources available for the investigation. Assess exactly who on staff can work on the project, how

much time you have to complete the work, and what resources will be needed. Try to identify any special needs, like storing a large number of electronic documents, translating foreign language documents, or developing a survey, and who might be able to help with them.

Convening a brainstorming session

Zack: Tip Number Two: Convene a brainstorming session with your colleagues, and spend 15 to 20 minutes brainstorming about how to investigate the topic. The idea is not only to list the obvious steps, but also to get creative about what else you can do. Designate someone to write down the ideas. Afterward, circulate the plan, and see if anyone, after a night's sleep, has anything to add. You will be amazed at how quickly you can figure out what to do, and how fun it is to generate a plan of action.

Building in bipartisanship, if possible

Elise: Tip Number Three: Build in a bipartisan approach to the investigation, if possible. You could start by inviting staffers from both parties to the initial brainstorming session, or consult separately with your counterparts across the aisle. The plan you circulate could reflect suggestions from both parties. Taking that approach will help ensure the investigative plan reflects the interests of both parties, incorporate a wider range of ideas, and make it more likely you examine the issues in a thoughtful, thorough, and credible way.

Framing the inquiry with open-ended factual questions

Zack: Tip Number Four: Write one or more open-ended factual questions to frame the inquiry. Congressional investigations aren't like science experiments where an investigator proposes a hypothesis and attempts to prove it – that approach produces narrow, biased results. Instead, Congressional investigators need factual questions that leave room for them to follow the evidence wherever it leads. Bipartisan input can help ensure the factual questions are stated in a neutral, productive way. Coming up with useful factual questions to guide your inquiry is a key element of the investigative plan.

Elise: Here's an example. When Senator Levin decided to investigate oil spills in the Great Lakes, many thought the oil spills came from oil tankers crossing the lakes. We could have framed the inquiry around that hypothesis, but instead we asked: What types of oil spills occur in the Great Lakes, and how are they handled? The investigation discovered that most Great Lakes oil spills came from land-based facilities rather than ships. That meant we needed to strengthen oil storage and pipeline safeguards rather than tanker safety. Asking the oil spill

questions in an open-ended way helped us avoid prejudging the outcome or letting our biases warp the fact-finding.

Zack: Using open-ended questions also makes it easier for the investigation to adapt as new leads and facts come in. Investigations nearly always move in unexpected directions. Open-ended questions help keep your eye on the ball, while providing flexibility for the investigation to evolve.

Identifying possible policy areas

Elise: Tip Number Five: In addition to devising open-ended factual questions, your investigative plan should develop a list of key policy areas that may be affected by your investigation. While the beginning of an inquiry is too early to think about specific reforms, brainstorming about possible policy areas will sensitize you to the laws, regulations, and policy issues that need to be researched. Bipartisan input will help ensure you are aware of the full range of policy issues that may crop up.

Listing ways to get preliminary information

Zack: Tip Number Six: After identifying key factual questions and policy areas, brainstorm about how to get key background and preliminary information. That includes identifying key reports and subject matter experts. Two places to start are CRS and GAO, agencies that have spent years researching issues of interest to Congress and are dedicated to helping you. Agency Inspectors General are another valuable resource designed to help Congress. Talking early to experts can save you a ton of work, and most experts will take the time to educate Congressional staff, so don't hesitate to reach out – even to notable individuals. In addition, be sure to list the key agencies, corporations, or groups that sparked the investigation or who you might want to use as case studies. They can provide you with valuable preliminary briefings.

Identifying sources of data, documents, and interviews

Elise: Tip Number Seven: Develop a list of possible sources of key data, documents, and interviews. In addition to sending information requests to the parties that sparked the investigation, think about other avenues. Are there federal or state agencies with helpful filings or data; federal or state prosecutors with related cases; banks or accountants with relevant financial records; or victims with useful information? How about a civil lawsuit with pleadings and exhibits? Maybe you can find an investigative reporter or public interest group that's been gathering information. Or a book in the Library of Congress that's chock-full of data and whose author might have more. Be creative.

Running the plan by your office

Zack: Tip Number Eight: Once the investigative plan is put to paper, it's a good idea to run it by several staff people in your office. Several sets of eyes can help identify problem areas or sensitivities, and whether the plan needs to be altered to line up with your boss' priorities or style. If the plan calls for investigating a powerful interest, you may need to get signoff from your boss on that element of the plan. Once the plan is finalized, consider sharing parts or all of it with your counterparts across the aisle to increase their involvement with the inquiry.

Considering whether to update the plan

Elise: Our last tip involves how to use the investigative plan. One option is to use it as a one-time, quick blast of energy to jump start your investigation. Another is to use it as an ongoing tool to track your investigative efforts and identify what still needs to be done. If it's helpful, you can update and adjust your plan as your investigation matures. It's up to you how to use it.

Zack: To help you get started on an investigative plan, the Levin Center has developed a form you can download, use, and improve.

For investigative plan template, see:

law.wayne.edu/investigativeplan

Developing an Investigative Plan

- 1. Identify available staff, time, and resources.**
- 2. Convene a brainstorming session.**
- 3. Build in bipartisanship, if possible.**
- 4. Frame the inquiry with open-ended factual questions.**
- 5. Identify possible policy areas.**
- 6. List ways to get preliminary information.**
- 7. Identify sources of data, documents, and interviews.**
- 8. Run the plan by your office.**
- 9. Consider whether to update the plan.**

Elise: Developing an investigative plan is an easy, fun, and useful way to assess the scope of your oversight investigation and establish a roadmap for conducting it. It can also promote bipartisan results. We hope these tips will help you take advantage of this investigative tool.

###