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## Hearings in the House of Representatives: A Guide for Preparation and Procedure

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# Hearings in the House of Representatives: A Guide for Preparation and Procedure

## Summary

Congressional hearings are the principal formal method by which committees collect and analyze information in the early stages of policy making. Whether legislative, oversight, investigative, or a combination of these, all hearings share common elements of preparation and conduct.

House Rule XI sets down many of the hearings regulations to which committees must conform, including the quorum requirement, advance submission of witness statements, the opportunity for minority party members to call witnesses of their choosing, the five-minute rule for questioning witnesses, witness rights, the process for issuing a subpoena, the procedure for closing a hearing to the public, and the broadcast of hearings and the behavior of the media. Committees have broad latitude in how they hold hearings, in part because they adopt their own rules of procedure. These rules may amplify and supplement House rules, but cannot contravene them. Customs of committees not embodied in rules also vary considerably among committees.

Committees usually plan extensively for hearings. Early planning activities commonly include collecting background information from sources within and outside the House, preparing a preliminary hearing memorandum for the chair and members discussing the scope of the hearings and the expected outcome, and scheduling and giving public notice of hearings. Carefully selecting witnesses, determining the order and format of their testimony, and preparing questions or talking points for committee members to use in questioning are all important considerations. Other arrangements include preparing briefing books; determining how the hearings will be broadcast; and attending to the many administrative matters, such as scheduling an official reporter.

On the day of a hearing, a committee needs a quorum to conduct business. While most hearings are open to the public, a committee may vote to close a hearing for a reason specifically stated in House rules. Representatives 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 the arranged format; this verbal testimony generally is a summary of the written testimony submitted in advance. The question and answer period that follows is an opportunity for a committee to build a public record on a matter and gather needed information to support future actions. House rules give each committee member five minutes to question each witness, but each committee determines the order in which its members will question witnesses and may allow extended questioning by committee members or staff.

Following a day of hearings, committee staff may prepare a summary of testimony, draft additional questions for the day's witnesses, and begin to ready the hearing transcripts for printing. Transcripts generally are printed, along with supplemental materials approved by the committee, although printing is not required.

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# Hearings in the House of Representatives: A Guide for Preparation and Procedure

## Introduction

### Coverage and Organization of the Report

Under House rules, each committee has authority to hold hearings whether the House is in session, has recessed, or has adjourned (House Rule XI, clause 2(m)(1)(A)). Committees may hold hearings in Washington, or hold “field hearings” outside the area. Whether legislative, oversight, investigative, or a combination of these, all hearings share common elements of preparation and conduct. This report emphasizes these shared elements.

The report describes provisions of House rules that pertain to hearings, and citations to these rules are included for reference. While House rules generally apply to committees and subcommittees, it is House Rule XI that contains many provisions specific to hearings. House rules set the general framework in which committees hold hearings.

Each committee is required to adopt and publish written rules of procedure which must be consistent with House rules, but which may expand upon them (House Rule XI, clause 2(a)(1)). A committee’s rules generally apply to its subcommittees, although some contain specific procedures for subcommittees (House Rule XI, clause 1(a)(1)(A)). The rules of many committees contain provisions pertaining to hearings, and this report gives examples from 108<sup>th</sup> Congress committee rules.<sup>1</sup> These examples are illustrative, intending to show the variation in particular areas. In some cases multiple committees have the same or similar provisions, but only one committee provides an example. Thus, this report does not attempt to list comprehensively all provisions of committee rules that apply to hearings.

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

In addition to House and committee rules, this report covers common committee practices in planning and holding hearings. Because each committee has its own rules and practices, hearing procedures may differ significantly among committees.

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<sup>1</sup> For a compilation of House committee rules, see U.S. Congress, House Committee on Rules, *Rules Adopted by the Committees of the House of Representatives*, committee print, 108<sup>th</sup> Cong., 1<sup>st</sup> sess. (Washington: GPO, 2003).

Members and staff needing comprehensive information on the hearing process of a particular committee are advised to consult the committee.

This report is organized into four main sections. The “Introduction” addresses not only coverage and organization, but also the role of hearings in the committee process, and the various types of hearings.

Committees plan extensively for hearings. Section 2, “Preparation For Hearings,” discusses how committees carry out these activities. Among other issues, this section covers:

- deciding whether to hold a hearing;
- sources that assist committees with hearings;
- procuring supplemental staff by contract or detail;
- holding joint hearings;
- scheduling and giving public notice of hearings;
- selecting witnesses and determining the order and format of testimony;
- securing advance written testimony from witnesses;
- written statements of non-governmental 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 3, “Conducting Hearings,” covers how a hearing is held. Among other matters, it discusses:

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

## **Hearings in the Committee Process**

Hearings are the broad information-gathering technique committees use — and have always used — in policy making and oversight. Hearings may be held on issues in the absence of specific legislation, but many are held on particular legislative proposals. In either case, Congress benefits from hearings in a variety of ways. Hearings inform Members, staff, and the public about measures and issues, and help assess the intensity of support for proposals. Hearings serve to monitor government programs and activities, and expose problems that Congress can later correct.

Hearings give citizens an opportunity to participate in the policy process, and help build the public record for a measure or issue.

House committees act on a minority of the measures introduced and referred to them, for a number of reasons. For instance, a committee usually receives many proposals in each major policy area within its jurisdiction, but ultimately chooses one measure as its vehicle in each such area. Also, a committee usually does not act on measures that it opposes. When a committee does act, it usually sends a bill to subcommittee for initial consideration, although committees do not uniformly require such referral. 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 handling of the matter, and political factors, among other reasons. When a committee or a subcommittee considers a measure, it generally takes four actions. Where a subcommittee initiates some of the four actions, the extent to which the full committee repeats some of these steps varies among committees and from issue to issue. The sequence of actions assumes the committee favors a measure, but 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 policy expertise and soliciting their written evaluation of the proposal. The executive agency typically sends a copy of the measure to the Office of Management and Budget (OMB) for a determination as to consistency with the President's program.

Second, a committee may decide to hold one or more hearings. Further committee action without hearings is the exception, although hearings have been bypassed to move measures expeditiously through committee or because of action on a related bill in the previous Congress. The importance of this action is well stated by congressional scholar Walter J. Oleszek:

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.<sup>2</sup>

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

Fourth, the full committee will report the legislation to the floor; subcommittees must report to their parent committees. When a committee reports a measure, it is also required to issue a written report that typically describes and explains the

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<sup>2</sup> Walter J. Oleszek, *Congressional Procedures and the Policy Process*, 6<sup>th</sup> ed. (Washington: CQ Press, 2004), p. 93.

measure's purposes and provisions and tells Members why the measure should be passed. The report also may summarize any relevant hearings that were held. This reporting requirement may be waived.

## Types of Hearings

All hearings share common elements of preparation and conduct. Some of these are governed by House rules, particularly House Rule XI. At the same time, hearings differ for a number of reasons. First, each committee must adopt its own rules of procedure for each Congress (House Rule XI, clause 2(a)(1-2)). These must be consistent with House 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, some committees do not routinely enforce the five-minute rule when examining witnesses, a rule that generally allows a Member to question each witness for five minutes until every member of the committee has had this opportunity (House Rule XI, clause 2(j)(2)).

Third, hearings are held for different purposes. Depending on the purpose, hearings can be grouped into three broad classes: legislative, oversight, or investigative.<sup>3</sup> (Sometimes one hearing has dual purposes, such as legislative and oversight.) While in general there are no separate House rules governing each type of hearing, some rules are invoked more frequently at particular types of hearings. For instance, Rule XI, clause 2(k)(3) and (5) contains provisions particularly applicable to investigative hearings, such as protections for the rights of witnesses. Also, a committee's power to subpoena (House Rule XI, clause 2(m)(1)(B)) usually is used to obtain documents for investigative hearings or to require the testimony of witnesses at these sessions.

Committees hold *legislative hearings* on measures or policy issues that may become legislation. Sometimes a committee holds hearings on multiple measures before ultimately choosing one vehicle for further committee and chamber action. Most often the goal of a legislative hearing is the consideration of a measure for enactment into law. These hearings provide a forum where facts and opinions on legislation can be presented by witnesses with many backgrounds, including Members of Congress and other government officials, representatives of interest groups and academia, and from additional citizens affected by the proposal.

*Oversight hearings* review or study a law, an issue or an activity, often focusing on the quality of federal programs and the performance of government officials. Hearings 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

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<sup>3</sup> Senate committees also hold confirmation hearings in fulfillment of the Senate's responsibility under the Constitution to give advice and consent to presidential nominees. Because the House does not have this constitutional duty, its committees do not hold confirmation hearings.

effectiveness of government operations. On April 30, 1997, for instance, the House Subcommittee on Immigration, Border Security, and Claims of the Committee on the Judiciary held an oversight hearing on safeguarding the integrity of the naturalization process. Many committees also oversee existing programs in the context of hearings on related legislation, or routinely perform oversight when it is time to reauthorize a program or agency.

*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 in governmental operations or of private citizens in business or other activities. Congress has exercised its investigative function since the earliest days of the republic, and its most famous inquiries are benchmarks in American history: Credit Mobilier, Teapot Dome, Army-McCarthy, Watergate, and Iran-Contra. In some cases, special committees have been created to conduct investigations, while at other times the standing committees have investigated matters within their jurisdictions. Investigative hearings often lead to legislation to address the problems uncovered. Judicial proceedings may precede or follow congressional inquiries.

*Field hearings* are mostly held in Washington, but sometimes a committee will decide there is a need to hold a hearing elsewhere. There are several reasons for field hearings. A field hearing brings Congress to the people. A committee can hear from witnesses who might find it inconvenient or be unable to travel to Washington to testify. A field hearing also can present information to citizens who are directly affected by a government program or issue. It can enhance a committee's oversight activities by providing the opportunity to evaluate programs "on site." It can orchestrate public support and attract visibility for an issue.

A field hearing can reinforce a committee chairman or other committee member's relationship with his or her constituents. It can provide an opportunity for local, regional, and sometimes national media coverage. Field hearings cannot be explicitly employed for political or electoral purposes. Regulations in the House forbid official travel for any political or campaign purposes.

The formal authority for field hearings is implicit in House Rule XI, clause 2, which states in part that a committee is authorized to "sit at such times and places within the United States, whether the House is in session, has recessed, or has adjourned, and to hold such hearings as it considers necessary." House rules do not otherwise distinguish field hearings from those held in Washington.

## **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 the political message it wishes to communicate, and then determine whether a hearing is the best method of achieving its goals. A hearing agenda is influenced by several



factors, including the salience of issues to the nation, the importance of policies to interest groups, and matters of significance to the President, House leaders, and other Representatives. 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 or even hundreds of proposals for possible examination and studies matters not embodied in specific legislation. In the context of this overall workload, a committee must decide whether holding a particular hearing is the best use of staff and funds. A committee also considers whether and how a hearing would fit into its overall schedule. It may be particularly difficult for committees with broad jurisdictions to allocate limited resources and to fit matters into the schedule.

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 discussion with committee members and staff may suffice.

## **Sources of Outside Assistance**

Numerous governmental and non-governmental resources are available to committees to assist with hearings. Because 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, an office established to respond to congressional requests for information.

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

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

The Government Accountability Office (GAO) provides assistance to committees principally by reviewing executive branch programs through independent audits, investigations, and evaluations. Its reviews measure the effectiveness of government programs. GAO's reports contribute to the background study and

examination necessary for hearings. For instance, reports on investigations of waste, fraud, and abuse in federal entities may be used at oversight and 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. Also, 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 committee 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.

Nongovernmental organizations provide a wealth of resources for committees. Knowledgeable individuals in universities, policy research institutes, law and consulting firms, and trade and other non-profit associations often are willing to assist committees with data, analysis, and testimony. Interest groups with public policy concerns 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 consulting policy experts and special interest groups, committees seek information and assistance from ordinary citizens who have direct experience with a proposed policy 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, with the permission of the Committee on House Administration. Regulations governing consultants and detailees are contained in the *Committees' Congressional Handbook*.<sup>4</sup>

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<sup>4</sup> U.S. Congress, Committee on House Administration, *Committees' Congressional Handbook: Regulations Governing the Expenditure of Committee Funds of the U.S. House* (continued...)

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 contract first must be approved by a majority of the committee that seeks consultant services. Information including the proposed contract, the need for the contract, the amount to be paid, and the consultant's resume must be submitted to the Committee on House Administration. Contracts for services which are "the regular and normal duties" of committee staff will not be approved by the Committee on House Administration. At the end of the contract, the chair of the committee employing the consultant must submit a report to the Committee with information including any studies or reports prepared by the consultant.

In the past, in order for a committee to hire a consultant, the funding resolution had to specify the portion of the committee's budget that could be spent on consultants. The requirement that the funding resolution contain a limit on consultant funds was eliminated in the 104<sup>th</sup> Congress (P.L. 104-186). Currently, no more than 10% of a committee's funds may be spent on consultants.

The chair of a committee seeking to have an employee detailed from a department or agency should submit a written request to the head of the appropriate agency or department. Any detail can not exceed one year, or the end of a Congress, whichever comes first. If the agency agrees to loan an employee, the committee chair submits an authorization request, with a copy of the detailing agreement, to the Committee on House Administration. Written approval of the Committee on House Administration is needed before an employee may be detailed.

In the 108<sup>th</sup> Congress, a committee generally may use detailees from government agencies on a reimbursable or a non-reimbursable basis, so long as the number of detailees does not exceed 10% of the committee's staff ceiling, as established by the Speaker. Committees must reimburse agencies for detailees above this limit. However, a committee must reimburse the Government Printing Office for all detailees.

The House Office of The Legislative Counsel assists in drafting legislation, works closely with committees, and sometimes assigns staff to work directly with a committee. Staff also may be available from the many fellowship, internship, and volunteer programs that place individuals with committee or Member offices. These programs can provide staff ranging in expertise from high school and college students with little or no experience, to trained professionals and subject specialists.

## 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, such as meeting rooms. Sometimes two House panels meet jointly. For example, on July 13, 1999, the Subcommittee on Energy of the Committee on Commerce, and the Subcommittee on Energy and Environment

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<sup>4</sup> (...continued)

*of Representatives*, 106<sup>th</sup> Cong. (Washington: GPO, 1999), pp. 17-18.

of the Committee on Science held a joint hearing on restructuring the Department of Energy. Sometimes, House and Senate panels hold a joint hearing. For instance, on March 6, 1996, the House Committee on Government Reform and Oversight and the Senate Committee on Governmental Affairs jointly examined the Government Performance and Results Act of 1993.

Some observers view joint committee sessions as an efficient use of time and resources. Joint hearings bring together the expertise and differing perspectives of panels. 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 of committee members and leaders. Further, coordinating meeting times between two panels may present greater scheduling difficulties.

## Scheduling

House committees may hold hearings at any time, except during a joint session or meeting of the House and Senate (House Rule XI, clause 2(i)).<sup>5</sup> Any Member may try to persuade a committee to hold hearings, but the chair generally controls the schedule. Paramount in scheduling for many committees is choosing a date and time convenient for committee leaders. The computerized scheduling service of the House Information Resources office (HIR) allows a committee to coordinate its schedule with that of other committees, to minimize scheduling conflicts for its members.

In order to maximize member participation, the rules of the House Republican Conference provide that committee rules should seek to avoid overlapping scheduling of subcommittee sessions. The rules of many committees thus contain provisions requiring coordination in scheduling hearings among a committee and its subcommittees.

Examples of several committee rules regarding scheduling follow. Subcommittee chairs of the House Committee on the Judiciary set dates for hearings after consultation with each other and with the full committee chair. Each subcommittee chair of the House Committee on Government Reform notifies the full committee chair of any hearings plans at least two weeks in advance, so that the chair can coordinate facilities and plans. On the House Committee on Rules, the chair of each subcommittee schedules hearings only after consultation with the full committee chair, and no subcommittee can meet at the same time as the full committee.

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<sup>5</sup> A joint session of Congress occurs upon the adoption by both chambers of a concurrent resolution. The House and Senate meet in joint session primarily to hear remarks by the President. The President's annual State of the Union address is an example. A joint meeting is held when both chambers declare themselves in recess, by resolution or unanimous consent. Congress holds joint meetings to receive addresses from foreign dignitaries and to commemorate events.

## Notice

Under House rules, the chair of a committee (except Rules) must give at least one week's public notice of the date, place, and subject of a hearing (House Rule XI, clause 2(g)(3)). Hearings may be held with less than one week's notice if either the chair, with the concurrence of the ranking minority member, or the committee, by majority vote, determines a need. When this happens, the notice should be given as soon as possible. Notices of hearings appear in the Daily Digest section of the *Congressional Record* and in the House's computerized committee scheduling service of HIR.

Often a committee sends announcements of a hearing to all its members, both well in advance of, and immediately before the hearing. Some committees also require that particular information be sent to their members or made available to the public. For instance, upon announcement of a hearing of the House Committee on Banking and Financial Services, committee staff prepare a concise summary of the subject matter under consideration and make it available immediately to committee members. As soon as possible, the House Committee on Resources provides its members with a tentative witness list and, to the extent practicable, a memorandum explaining the subject of the hearing. Additionally, the chair makes available to committee members any official reports from departments and agencies on the subject matter of the hearing. The House Committee on Education and the Workforce generally requires its chair to make public the final list of witnesses 48 hours before a hearing.

## Choosing and Inviting Witnesses

Choosing witnesses is often one of the most important issues in planning a hearing. Committees pay careful attention to which viewpoints will be represented, who should testify, and the order and format for presenting witnesses.

In some cases a committee will strive to make sure that all reasonable points of view are represented, while in other cases witnesses expressing only particular points of view will be invited. House rules allow the minority party members of a committee to call witnesses of their choice on at least one day of a hearing, if a majority of them makes this request to the committee chair before completion of the hearing (House Rule XI, clause 2(j)(1)). In lieu of this formal option, the minority sometimes works informally with the majority to invite witnesses representing its views.

In order to testify, a witness must be invited by the committee. Before officially inviting a witness, committee staff identify and often interview prospective candidates. When suitable witnesses are found, the committee chair sends a formal letter of invitation. This letter generally 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 may 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 material from the media relating to the issue. Often a staff contact is indicated. Staff will sometimes meet with witnesses before a hearing to answer questions and to review procedure.

A committee may reimburse a witness for expenses related to testimony, and if reimbursement is expected, the letter of invitation may address this point. Under guidelines of the Committee on House Administration, reimbursement is made only if a witness could not appear before a committee without it. The committee chair must specifically authorize the payment. House rules set the rate of pay to be the same *per diem* amount as authorized by the Committee for Members and employees of the House, and actual expenses for travel (House Rule XI, clause 5). However, no *per diem* is paid to witnesses who have been subpoenaed.

## **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. House rules require each witness (insofar as is practicable) to file with the committee an advance copy of written testimony, and then to limit oral remarks to a brief summary of his or her statement (House Rule XI, clause 2(g)(4)). The individual rules of committees often state how far in advance of the hearing testimony should be filed, usually between 24 and 72 hours. The rules sometimes also require submission of multiple copies, and specify to whom the testimony should be delivered.

For example, the Committee on Financial Services and the Committee on Rules ask for testimony 24 hours in advance; the former generally requests 200 copies for full committee hearings and 100 copies for subcommittee hearings. The Committees on House Administration, Small Business, Ways and Means, and Education and the Workforce ordinarily require testimony 48 hours before a hearing. The Committee on Small Business calls for 50 copies of testimony; the Committee on Ways and Means requests sufficient copies for distribution to members, staff, and the media; and the Committee on Education and the Workforce also calls for a brief summary of written testimony. Permanent Select Committee on Intelligence witnesses generally must file statements 72 hours in advance.

A committee has authority to decide when it is impracticable to require advance written testimony, for instance, when a witness is invited with too little notice. The House Committee on Appropriations does not apply the requirement for advance written testimony and a subsequent oral summary of the testimony for witnesses at hearings on the overall federal budget. In most cases, however, committees assert their right to receive advance copies of testimony for several reasons. Before the hearing, committees may want to summarize or outline the testimony, draft questions tailored to each witness's statement, and photocopy the statement for distribution to the press and others.

Committee rules sometimes stipulate that testimony be submitted in both written and electronic form. Electronic submission can facilitate printing the testimony as part of the hearing record and making testimony available to the public online. The

Committee on Armed Services, for instance, asks that a prepared statement be submitted in electronic form at the time the written statement is submitted. Similarly, for matters of original jurisdiction, the Committee on Rules requests each witness to file a statement of proposed testimony in written and electronic form, to the maximum extent practicable.

## **Statements of Non-Governmental Witnesses**

The advance written statements of non-governmental witnesses must contain particular information. In addition to a resume, the statement must contain the amount and source of any federal grant or contract received by the witness or the organization being represented during the current or previous two fiscal years (House Rule XI, clause 2(g)(4)). The “Truth in Testimony Rule,” as it is commonly called, was adopted at the beginning of the 105<sup>th</sup> Congress. It is intended to provide committee members and the public with information on a witness’s education, experience, and receipt of grants and contracts to assist members in evaluating the witness’s views and remarks. The rules of the Committee on Science state explicitly that witnesses should provide information on grants or contracts which are relevant to the subject of the testimony.

Committee rules rarely compel additional specific information to be included in witness testimony. A notable exception is the Committee on Ways and Means, which requires a hearing witness who submits a statement for the record, or a written response to a published request for comments, to include a list of all clients, persons, or organizations on whose behalf the witness appears.

## **Format and Order of Witness Testimony**

Committees determine the format and order of presenting witnesses. According to one traditional format, a witness summarizes his or her written statement and then takes questions from committee members before a second witness testifies. Committees have used different formats recently, and it has become common to present witnesses with diverging viewpoints as a panel. The usual practice in this case for all 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, which may not always formally be considered hearings. For instance, committees have held seminars consisting of briefings by experts with informal opportunities for asking questions, and roundtable discussions where committee members and staff have a free-flowing dialogue with knowledgeable outsiders.

The order in which witnesses testify is arranged at the discretion of the committee. Protocol dictates that a Member of Congress desiring to testify generally appears before other witnesses, and a similar privilege often is extended to high-ranking executive branch officials. Celebrity witnesses are carefully placed in the lineup because they often generate significant media and public attention. They often are scheduled to appear at times of high attendance by committee members and viewing by the public, such as at the beginning of the hearing. Academics,

representatives from interest groups, and other private citizens are arranged in a way that most favorably presents information and communicates the intent of the committee. For example, a committee may arrange its witnesses to allow one individual to refute 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. However, if a person will not come by invitation, a committee may require a witness to appear through a subpoena (House Rule XI, clause 2(m)(A-B)). Committees also may subpoena any relevant books, records, correspondence, memoranda, papers, and other documents. Subpoenas are used infrequently, and most often at investigative hearings.

Under House rules, a committee may authorize and issue a subpoena with a majority quorum present. However, a committee may delegate this authority to its chair, under any limitations it establishes. Many committees currently require majority approval to issue a subpoena, but have adopted additional procedures. For instance, the House Committee on Agriculture requires that a notice of a meeting to issue a subpoena be sent to all members by 5 p.m. on the day preceding the meeting. Several committees, including Energy and Commerce, allow the chair to issue a subpoena during any adjournment of the House for more than three days. The House Committee on Energy and Commerce chair must notify the committee of this action as soon as possible, in no case later than one week after service of the subpoena. If a request for a subpoena has not been previously rejected by the Committee on Transportation and Infrastructure or one of its subcommittees, the full committee chair may issue the subpoena after consultation with the ranking minority member. The chair must then notify all committee members of the action.

Other committees have delegated general subpoena authority to the chair. The rules of the Committee on Small Business allow the chair to issue a full committee subpoena, although the ranking minority member must be promptly notified. Further, the chairs of Small Business subcommittees are authorized to issue subpoenas for their panels, but require the approval of a majority of the subcommittee and the full committee chair.

A committee requiring a subpoena can obtain the appropriate form from the Clerk of the House. Subpoenas usually are delivered by authorized committee staff or by the U.S. Marshal's office. Compliance with a subpoena can be enforced only at the direction of the House. Under one method of enforcement, a committee could report a resolution citing for contempt of Congress an individual who did not respond to a subpoena. If approved by the House, the resolution would be sent to the Office of the U.S. Attorney for prosecution.

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, committees commonly take testimony in private, in some cases from individuals who also appear as witnesses. The testimony is sometimes taken under



oath, and a transcript may be prepared. Individuals often are accompanied by counsel, and respond to prepared questions.

Because House rules do not expressly authorize committees to take depositions, on occasion the House has granted specific authority for such action by resolution. In such cases, the committee usually has adopted procedures expanding on its authority to take depositions. As an example, the House in 1997 approved a resolution authorizing staff of the Committee on Government Reform to take depositions in the study of alleged political fundraising improprieties and possible violations of law (H.Res. 167, 105<sup>th</sup> Congress, agreed to June 20, 1997).

## **Briefing Books**

Committees often ask staff to prepare summary and background material for use by their members 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 might 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. Background material might include pertinent statutes and regulations, court decisions, press articles, agency reports, academic studies, and a chronology of major events. To assist members with witnesses, the books might contain a list of witnesses in their order of appearance, a copy or summary of written testimony, and biographical information. Briefing material might also include questions or talking points for committee members to use in opening statements and in examining witnesses.

Before a hearing, committee staff sometimes brief members and other staff. Staff may 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 not narrowly limited to collecting information for policy development. The goal may include publicizing an issue or problem to focus attention on it. 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. Hearings also are used to build support for a proposal among the public generally or certain sectors thereof. Members and witnesses make arguments that form part of the public record in support of future committee action, such as reporting a measure.

House rules influence how a committee plans for media coverage and other publicity matters. For example, House rules require that hearings be open to the public, as well as to radio, television, and still photography coverage, unless a committee votes to close a hearing (House Rule XI, clause 2(g)(2)(A)). Hearings may be closed only for limited and specific reasons — for example, to deal with

information that could compromise national security. (See “Closing a Hearing,” below.)

Detailed provisions of House rules dealing with broadcasting committee hearings point up the importance to Congress of television coverage (House Rule XI, clause 4). Among the issues covered are the following:

- Radio and television coverage cannot be used as partisan political campaign material to promote or oppose a person’s political candidacy.
- Coverage must be “in strict conformity with and observance of the acceptable standards of dignity, propriety, courtesy, and decorum traditionally observed by the House.”
- Hearings open to the public must be open to coverage by the media, although in November 1997, the House removed language in Rule XI, clause 4 that previously allowed subpoenaed witnesses to request that television lenses be covered, microphones used for media coverage be turned off, and still cameras not be used.
- Once a chair determines the number of cameras that will be permitted in a hearing, the Executive Committee of the Radio and Television Correspondents’ Galleries determines how those cameras will be allocated among the television media.
- Neither television cameras nor still photographers can be positioned between the witness table and members of the committee, and photographers may not position themselves where they might obstruct coverage by other media.
- Television cameras must operate from fixed positions and cannot obstruct coverage of the hearing by other media.
- Television and radio equipment must be in place before the hearing begins and cannot be installed or removed from the hearing room while the committee is in session.
- Technicians may install additional lighting in a hearing or meeting room in order to raise the ambient lighting level in a hearing to the lowest level necessary to provide adequate television coverage. Otherwise, additional lighting, such as spotlights and strobelights, is not permitted.
- Preference in allocating the number of still photographers permitted by committee chairs must be given to photographers from the Associated Press Photos and United Press International Newspictures. If requests are made by more media than permitted by the chair, pool coverage is arranged by the Standing Committee of Press Photographers.

- Individuals providing media coverage must be accredited to the Radio and Television Correspondents' Galleries or the Press Photographers' Gallery.

The House Committee on Ways and Means is one of the few committees with rules expanding upon these provisions. The committee forbids interviews in the hearing room while the committee is in session, and individual interviews must take place before the gavel falls to convene a meeting or after the gavel falls for its adjournment. The media must notify the committee one day in advance of planned "electronic coverage." In addition, klieg lights are permitted in the hearing room but only during the first 15 minutes after the chair initially calls the committee to order.

Committee press aides usually are responsible for planning media coverage for a hearing, and they typically employ a number of diverse techniques for attracting and managing the media. In some cases, press aides in Members' personal offices take similar actions on behalf of individual committee members. Often an early objective is to seek the assistance of the House Press Gallery, the Periodical Press Gallery, and the Radio and Television Correspondents' Gallery. The mission of the gallery staffs is not only to facilitate coverage of House activities on behalf of the media, but also to assist Member and committee 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, including setting cables for broadcasting.

Some committees routinely prepare 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 the committee's press list, press releases also can be distributed to committee and Member offices and the House press galleries. Language from press releases can be used to draft "Dear Colleague" letters and Member statements for use in committee and on the floor.

Committee staff often put together 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 interested journalists of important issues in an upcoming hearing, and for clarifying issues immediately following a hearing. Some committee members prefer to meet

informally with reporters in the hallway outside the hearing room. Others prefer a more structured environment, in the hearing room or the Member's office.

## **Administrative Matters**

Dozens of administrative arrangements need to be made before a hearing, and these usually are the responsibility of the committee's administrative staff. Two important administrative matters are (1) reserving a hearing room, and (2) arranging for an official reporter early in the planning stage. If a committee's own hearing rooms are unavailable, it may try to use a room of another committee. In the past, it has also been possible to use rooms within the jurisdiction of the Speaker and other leaders and officers by contacting the pertinent offices. Upon request, the office of Official Reporters (Clerk of the House) will provide a reporter to transcribe a hearing.

Many administrative details concern the physical setup of the hearing room. These include securing furniture and equipment; arranging items on the dais such as nameplates, writing materials, ashtrays, 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 House rules; reserving seats for the press, staff, witnesses, or other individuals; and arranging for turning on audio consoles, microphones, and lighting. Sufficient copies of relevant materials, such as Member and witness statements, should be provided for distribution at the hearing.

Security during hearings is provided by the U.S. Capitol Police. If a hearing deals with sensitive or volatile issues, or there is unusually great public interest, multiple officers in uniform or plain clothes may be assigned. The Capitol Police may take any law enforcement actions that become necessary during the course of a hearing, such as responding to a disturbance or making an arrest of an unruly spectator. The Capitol Police also provide security for protected witnesses, such as the Attorney General and other high-ranking government officials.

**Field Hearings.** A field hearing presents 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 Members, witnesses, and the public, and the availability of a sound system and the technicians to operate it. Security personnel also need to be arranged.

When 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 Representative or staff aide attending a field hearing, including transportation, meals and incidentals such as parking charges, are reimbursable by the committee holding the hearing. Automobile rentals are also reimbursable provided that the car is used only to transport Members or staff authorized by the committee for travel.

Regulations printed in the House Administration Committee's *Committees' Congressional Handbook* cover several matters specific to field hearings. Committees are authorized to rent commercial space when public space is not available or suitable. If a committee has to lease private space for a field hearing, it may be asked to provide a certificate of insurance. The House does not carry a private insurance policy and generally does not permit the use of committee funds to pay for a private insurance policy. House regulations also stipulate that the Office of Official Reporters to Committees will either send an official reporter or arrange for a stenographic reporter from a commercial firm at the location of the field hearing.

## Conducting Hearings

As previously noted, hearings involve extensive preparation. By the day of the hearing, important requirements of House rules, such as publicly announcing hearings, have been met. Critical decisions, such as choice and format of witnesses, have been made. Necessary research has been conducted and relevant materials assembled in a briefing book. Briefings may have been prepared for Members, staff, witnesses, and the press. Administrative issues, such as arranging for an official reporter, have been attended to. Because of thorough and careful preparation, many hearings proceed without surprises. However, committees sometimes confront unanticipated events that require a change in plans, such as calling additional witnesses or closing a session to the public.

## Quorum

Each committee can determine the number of members required for its hearings, but House rules require a minimum quorum of two members at any hearing (House Rule XI, clause 2(h)(2)). While most committees have adopted this minimum, there are variations. For example, the Committee on Ways and Means requires a quorum of two, but its rule requires that every effort be made to secure the presence of at least one majority and one minority party member. The Rules Committee operates with different hearings quorums for different purposes. The quorum is five for full committee testimony on requests for rules, three for measures or matters of original jurisdiction before the full committee, and two for testimony before subcommittees.

Committee staff often poll members before the start of a hearing to determine who plans to attend. Sometimes staff also obtain information on where members can be reached, in case they are needed to meet the quorum requirement. Committees sometimes proceed with hearings without a quorum. For instance, a committee may work through a roll call vote on the floor by leaving only one member presiding over the hearing while others vote. The first committee member to return from the floor may replace the member presiding, who then leaves to cast his or her vote. However, if any member makes a point of order that a quorum is not present, the committee cannot continue to conduct business until the presence of a quorum is established.

## Closing a Hearing

The vast majority of committee hearings are open to the public, as required under House rules. But House rules permit committees to close a hearing for specific reasons, and outline the procedure for doing so (House Rule XI, clauses 2(g)(2) and 2(k)(5)). A hearing may be closed to the public “because disclosure of testimony, evidence, or other matters to be considered would endanger the national security, would compromise sensitive law enforcement information, or would violate any law or rule of the House of Representatives.” To close part or all of a hearing, a committee must vote by roll call in open session and with a majority present. However, with a quorum present for taking testimony, a committee may vote to close a hearing (1) because the anticipated testimony at an investigative hearing “may tend to defame, degrade, or incriminate any person,” or (2) solely to discuss whether there is reason to continue the hearing in closed session.

House rules permit most committees to close a hearing on a particular day and on one subsequent day of hearings. However, the Committees on Appropriations, Armed Services, and Intelligence may vote to close their hearings for five additional, consecutive days of hearings.

Members of the House generally may attend, but not participate in, hearings of committees (except the Committee on Standards of Official Conduct) on which they do not serve. Nevertheless, the House may vote to authorize a committee to use procedures for closing a hearing to the public to close hearings to Members not on the committee as well.

## Witness Rights

In 1955, the House first adopted rules to protect the rights of witnesses. These rules responded to criticism about the treatment of witnesses, particularly at investigative hearings such as those to explore Communist Party activities in the United States. Today, several protections for witnesses, especially at investigative hearings, are contained in House rules (House Rule XI, clause 2(k)). For example, witnesses are provided a copy of the rules of the committee and House rules applicable to investigative hearings. They may be accompanied by their own counsel to advise them of their constitutional rights. Further, if evidence will tend to defame, degrade, or incriminate a person, the committee may vote, with a quorum present for taking testimony, to meet in closed session. The committee may proceed in open session only if the committee, with a majority present, determines that the evidence will not have these effects on this person. In either case, the committee will give the person an opportunity to appear as a witness, and will take requests from the individual to subpoena additional witnesses. In other instances, the chair receives and the committee disposes of requests to subpoena witnesses.

Witnesses also are protected by the Constitution, in particular, the Fourth, Fifth, and First Amendments. While committees need to obtain answers to questions, the Fourth Amendment prohibits unreasonable search and seizure to obtain information. Under Fifth Amendment protection against self-incrimination, witnesses cannot be compelled to give evidence against themselves unless granted immunity. The First

Amendment protects witnesses who may seek to refuse compliance with a committee subpoena by claiming that the committee infringed on the witness's right to free speech, assembly, or petition.

## **Opening Statements**

When present, the committee chair ordinarily will preside over its hearings. House rules allow each committee chair to designate a majority party member to be the vice chair of the full committee or a subcommittee, and stipulate that the vice chair presides in the temporary absence of the chair (House Rule XI, clause 2(d)). If both the chair and vice chair are absent, the most senior majority party member presides.

To begin the hearing, the chair usually 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 matter; how interruptions, such as for roll call votes, will be handled; and the schedule of future hearings. When finished, the chair generally recognizes the ranking minority party member to make an opening statement, and may then recognize other members.

However, not all committees allow opening statements by all committee members. The rules of the Committee on Resources, for instance, preclude opening statements unless the chair (or designee) makes a statement, in which case the ranking minority member (or designee) also may make a statement. In practice, chairs of other committees sometimes discourage opening statements in the interest of time, perhaps asking that interested members instead submit opening statements for the printed hearing record.

Where opening statements are permitted, they usually occur under the five-minute rule which allows a member to speak for five minutes when recognized by the chair. However, this is not always the case. While the Committee on Energy and Commerce chair and ranking minority member (or designees) may speak for five minutes, other committee members are limited to three minutes each. The Committee on Science attempts to restrict the total time of opening statements. Its rules generally provide that, after consultation with the ranking minority member, the chair limits the total time for opening statements by members to no more than 10 minutes. The time is equally divided among members present who wish to make an opening statement.

## **Introducing Witnesses and Administering the Oath**

Following any opening statements, the chair generally introduces each witness in accordance with the arranged order and format. A committee member other than the chair might introduce a witness in some cases. The Committee on Resources, for instance, permits a committee member to introduce a witness who is a constituent.

House rules authorize the chair, or any member designated by the chair, to administer the oath to a witness (House Rule XI, clause 2(m)(2)). In practice, most

committees rarely require testimony under oath. Swearing in of witnesses appears to be more common at investigative hearings and hearings dealing with sensitive subject matter. For instance, under the rules of the Permanent Select Committee on Intelligence, testimony is to be given under oath or affirmation, unless waived by the chair. Further, the rules of a few committees prescribe a particular oath if witnesses are sworn. The rules of the Committee on Armed Services contain the following: “Do you solemnly swear (or affirm) that the testimony you will give before this Committee (or subcommittee) in the matters now under consideration will be the truth, the whole truth, and nothing but the truth, so help you God?”

## **Oral Testimony of Witnesses**

Under House rules, each committee requires witnesses to limit their oral testimony to a brief summary of their argument, insofar as is practicable (House Rule XI, clause 2(g)(4)). In the interest of time, and because written testimony generally is available to the committee in advance, it is usually not necessary or desirable for a witness to read his or her entire written statement.

On some committees the chair has the discretion to determine how long a witness may speak. On the Committee on Agriculture, witnesses may be limited to brief summaries of their statements within the time allotted to them, at the discretion of the chair. Other committees have adopted rules stipulating how long a witness may speak, typically for five minutes. For instance, each witness before the Committee on Resources and the Committee on Science is restricted to a five minute summary of his or her written remarks. Resources Committee witnesses may be granted additional time by the chair, in consultation with the ranking minority member, and Science Committee witnesses may receive additional time from the chair.

## **Five-Minute Rule for Questioning Witnesses**

The question and answer period which follows a witness’s opening statement presents an opportunity for a 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, the expected line of questioning is discussed in advance with witnesses.

House rules generally accord committee members five minutes to question each witness until every member has had this opportunity (House Rule XI, clause 2(j)(2)). In practice, many committees allow an extension of time by unanimous consent, and a few committees, such as Veterans’ Affairs, specify this in their rules. After the first round of questioning under the five-minute rule, committees can determine how to dispose of any additional time. Some committees’ rules specify a procedure for using additional time. For example, the rules of the House Committee on the Budget provide for a second round of questioning under the five-minute rule, while rules of the Committee on Agriculture allow the chair to limit the time for further questioning.



## Extended Questioning of Witnesses

House rules allow a committee to extend the time for questioning witnesses by adopting a rule or motion to allow an equal number of its majority and minority party members to question a witness for a period not to exceed one hour in the aggregate (House Rule XI, clause 2(j)(1)(B)). Similarly, a committee may adopt a rule or motion allowing its majority and minority staff to question a witness for equal periods of time, not to exceed one hour in the aggregate (House Rule XI, clause 2(j)(1)(C)).

Several committees have adopted procedures allowing extended questioning. The rules of some committees, for instance the Committee on Agriculture, give only members this authority. They state that the chair and ranking minority member may designate an equal number of members from each party to question witnesses, and that no person shall interrogate witnesses other than committee and subcommittee members unless a majority of the committee or subcommittee determines otherwise.

The source of the authority for extended questioning differs among committees. On the Committee on Government Reform, the chair, with the concurrence of the ranking minority member, or the committee by motion, may permit members or staff to question witnesses for an extended period. On the Committee on Veterans' Affairs, the chair, after consultation with the ranking minority member, may designate members or permit staff to conduct extended questioning.

Further, a few committees specify when any extended questioning could occur. For instance, the chair of the Committee on Veterans' Affairs can not recognize a member for extended questioning until all members have had a chance to question witnesses under the five minute rule. By contrast, the rules of the House Committee on Government Reform imply that extended questioning may precede the questioning of witnesses under the five minute rule.

A few committee rules also detail how the time for extended questioning is to be allocated. On the Committee on Government Reform, the chair determines how to allocate the time permitted for extended questioning by majority members or staff, and the ranking minority member determines how to allocate the time for minority members or staff. The chair, or the ranking minority member, as applicable, may allocate the time for extended questioning by staff to members.

## Order of Questioning Witnesses

Each committee has discretion to determine the order in which its 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 members' order of arrival at the hearing. Some committees use a combination of these two methods. The rules of many committees contain provisions granting their chairs flexibility in recognition, to take into consideration the ratio of majority to minority members present. In practice, committee chairs may entertain requests to proceed out of order to accommodate the schedules of individual members.

Committee rules covering the order for questioning witnesses vary. On the Committee on House Administration, questioning begins with the chair and ranking minority party member, then alternates between the majority and minority parties. Further, the chair is to take into consideration the ratio of majority to minority members present in order not to disadvantage the majority. The chair may accomplish this by recognizing two majority party members for each minority member recognized. In the case of the Committee on Armed Services, all members present at the start of a hearing will be recognized in order of seniority, and thereafter, members are recognized in order of appearance. However, the committee chair also must take into consideration the ratio of majority to minority members present, and the chair and ranking minority member take precedence upon their arrival.

## **Relevancy of Debate and Questions**

House rules require Members speaking on the floor to confine themselves to the question under debate (House Rule XVII(1)(b)(1)). While this rule generally is applicable to debate in committee, some committee rules apply it explicitly to hearings. In questioning witnesses, members of the Committee on Transportation and Infrastructure are limited in their remarks to the subject matter under consideration. The Committee on Armed Services requires questions put to witnesses to be pertinent to the measure or matter under consideration. The House Committee on Government Reform requires that questions put to witnesses at investigative hearings be relevant to the subject matter before the committee, and that the chair rule on relevance of questions put to witnesses. On the Committee on Agriculture, members are limited in debate to the subject matter under consideration, unless by unanimous consent permission is granted to extend remarks beyond the subject. In addition, questions put to witnesses must be germane to the matter under consideration.

## **Questioning by Non-Members of the Committee or Subcommittee**

House rules allow committees to adopt a rule or motion permitting majority and minority staff to question witnesses for equal periods of time. (See “Extended Questioning of Witnesses.”) Committee rules sometimes give additional authority for staff to question witnesses. The Permanent Select Committee on Intelligence, for example, allows witnesses to be interrogated by such committee staff as are authorized by the chair or the presiding member.

Several committees permit their members to participate in the hearings of subcommittees of which they are not members, although the specific provisions differ. In some cases, this prerogative appears to be restricted to the chair and ranking minority member of the full committee. For instance, many committees allow the chair and ranking minority member to serve, *ex-officio*, on all subcommittees, which presumably allows them to participate in subcommittee hearings. The rules of the Committee on Appropriations make explicit that the chair and ranking minority member may sit as members of all subcommittees and may participate in subcommittee work. Their participation may include voting.

By contrast, the Committee on Education and the Workforce allows any committee member to attend subcommittee hearings and question witnesses. Other committees explicitly bar non-subcommittee members from engaging in certain activities, while presumably allowing them to question witnesses. Any member of the Committee on Veterans' Affairs, for example, may sit with any subcommittee during any hearing or meeting, but may not vote, be counted for a quorum, or raise a point of order.

Relatedly, even if a hearing is closed to the public, all Members of the House generally may attend, but not participate in, hearings of committees (except the Committee on Standards of Official Conduct) on which they do not serve (House Rule XI, clause 2(g)(2)(c)). However, a committee may use the procedures for closing a hearing to the public to close hearings to Members not on the committee, if the House so authorizes by vote.

## **Post-Hearing Activities**

After examining the last witness, the committee chair closes the hearing. The chair may summarize what has been learned about the issue, and comment on the future committee schedule or expected action.

After a day of hearings, staff may be asked to prepare a summary of testimony. The summary may be distributed to committee members and the press and become part of any published hearing. Follow-up questions can be prepared and submitted to witnesses for written replies to clear up points not resolved during the hearing. If the hearing is investigative, the committee can prepare and issue its report. If the hearing is legislative, the committee may proceed to mark up and report a measure to the House. 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.

Committees generally are protected on the House floor from points of order against actions that occurred during their hearings. Under House rules, in general, a point of order cannot be raised on the floor against a measure reported by a committee on the grounds that the committee had not complied with provisions in House rules concerning hearings (House Rule XI, clause 2(g)(5)). However, a member of the reporting committee may make such a point of order on the floor if the point of order was made in committee in a timely manner but was improperly overruled or not properly considered.

## **Printing Hearings**

Committees are required to keep transcripts of their hearings. Most committees regularly ask the Office of Official Reporters, Clerk of the House, to provide a reporter to transcribe a hearing. Transcripts must be substantially verbatim (House Rule XI, clause 2(e)(1)(A)). Only technical, grammatical, and typographical corrections authorized by the person making the remarks are allowed.

Further, committees usually publish their transcripts, although publication is not required. House rules encourage committees to publish their hearings on reported measures. In general, if hearings have been held on any measure or matter reported by committee, the rules require the committee to make every reasonable effort to have the hearings printed and available to Members before floor consideration (House Rule XIII, clause 4(b)). General appropriations bills may not be considered in the House until printed hearings and a committee report have been available for at least three calendar days, excluding Saturdays, Sundays, and legal holidays, except when the House is in session on such a day (House Rule XIII, clause 4(c)). In addition, testimony taken in executive session may not be released or used in public sessions without the consent of a majority of the committee present (House Rule XI, clause 2(k)(7)).

The rules of some committees address the authority to print hearings. Transcripts of Budget Committee hearings may be printed if the chair so decides or if a majority of the members so requests. The Appropriations Committee requires that a transcript of all hearings on the federal budget as a whole be printed and distributed to Members.

Each committee may establish procedures for correcting its transcripts, and some committees have rules to expedite this process. The Committee on Ways and Means, for example, requires each witness to correct and return the transcript, and members must correct their testimony and return the corrected transcripts as soon as possible. Further, the committee chair can order a transcript printed without the corrections of a member or witness if the chair determines that a reasonable time has elapsed and that further delay would impede the legislative process.

Each committee also has discretion to print supplemental materials as part of the printed hearing. For example, in its printed hearing a committee might include written statements of witnesses, charts, and research materials prepared by committee staff, and letters and testimony from individuals who did not appear as witnesses. A printed hearing also might include witness responses to questions posed during the hearing that the witness could not answer on the spot, or witness responses to follow-up questions. The rules of some committees address the printing of supplemental material or information. For instance, the Committee on Agriculture's hearings must include the attendance of members during the hearings.

House rules require that, to the maximum extent feasible, committees are to make their publications available to the public in electronic form (House Rule XI, clause 2(e)(4)). This rule change in the 105<sup>th</sup> Congress was intended to encourage committees to make printed, public materials available on the Internet. While a number of committee rules restate this House rule, those of the Committee on Small Business expressly state that the proposed testimony of witnesses must be provided to the public in electronic form. Since the 106<sup>th</sup> Congress, most committees have made written testimony and/or hearing transcripts available online. (See [<http://www.house.gov/house/CommitteeWWW.html>].)

House rules require that a committee's hearings, records, and other documents be kept separate from the personal office records of the chair, and generally allow all Members of the House access to a committee's records (House Rule XI, clause

2(e)(2)). The Legislative Reorganization Act of 1946 requires that at the end of each session of Congress, each committee's printed hearings must be bound by the Library of Congress. In addition, at the end of each Congress, the chair of each committee is to transfer to the Clerk of the House the noncurrent records of the committee (House Rule VII, clause 1). Noncurrent committee records are preserved and made available by the National Archives and Records Administration, in accordance with House and committee rules.

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