

University of Chicago Law School

Chicago Unbound

Coase-Sandor Working Paper Series in Law and
Economics

Working Papers

2018

Who Conducts Oversight? Bill-Writers, Lifers, and Nail-Biters

Brian D. Feinstein

Follow this and additional works at: https://chicagounbound.uchicago.edu/law_and_economics_wp



Part of the **Law Commons**

Chicago Unbound includes both works in progress and final versions of articles. Please be aware that a more recent version of this article may be available on Chicago Unbound, SSRN or elsewhere.

WHO CONDUCTS OVERSIGHT? BILL-WRITERS, LIFERS, AND NAILBITERS

BRIAN D. FEINSTEIN[†]

I. INTRODUCTION	127
II. HYPOTHESES.....	128
III. RESEARCH DESIGN.....	131
IV. RESULTS.....	139
V. CONCLUSION	147

The landmark Legislative Reorganization Act of 1946 charges Congress, through its standing committees, to “exercise continuous watchfulness” over the executive branch. Yet, committees differ markedly in their performance of this responsibility; the modal House committee does not convene oversight hearings in the typical year, while other committees holds dozens of hearings. This Article compares the characteristics of committee chairs that pursue oversight vigorously with those that do not. Surprisingly, I find that chairs’ previous prosecutorial or other legal experience has no discernable connection with oversight activity. Instead, committees that engage in frequent oversight tend to be chaired by productive lawmakers (“bill-writers”), members with long tenures in office (“lifers”), and members facing competitive elections (“nailbiters”). Should congressional leaders desire to increase their branch’s role in governance after the passage of laws, they ought to encourage members with these characteristics to chair committees.

I. INTRODUCTION

By now, it’s an old story: Congress delegates enormous authority to the executive branch,¹ then shirks its responsibility to monitor these delegations.² Proposals to encourage Congress to better perform its

[†] Assistant Professor of Legal Studies & Business Ethics, The Wharton School of the University of Pennsylvania. This Article was prepared for the Wayne Law Review Symposium on Congressional Oversight in the 21st Century, held at the Levin Center at Wayne State University Law School, March 23, 2018. I thank Elise Bean, Lauren Bell, Kimberly Breedon, Christopher Bryant, Kathleen Clark, Kevin Kosar, William Marshall, and Andrew McCanse Wright for helpful comments, and James Feinstein for his good cheer.

1. See Kathryn A. Watts, *Rulemaking at Legislating*, 103 GEO. L.J. 1003, 1003 (2015).

2. See, e.g., THEODORE J. LOWI, *THE END OF LIBERALISM: THE SECOND REPUBLIC OF THE UNITED STATES* (1979); JOINT COMM. ON THE ORG. OF CONG., *ORGANIZATION OF THE CONGRESS: FINAL REPORT* (1993) (quoting Government Operations Committee chair John

oversight function range from the practical—e.g., calls from politically savvy think-tankers to increase staff resources³—to more fanciful ideas from those more fully barricaded in the ivory tower.⁴ Missing from all of this is a sense of how the composition of Congress’s committees impacts oversight activity. If legislators possessing certain characteristics tend to engage in greater oversight, then congressional leaders wishing to boost their branch’s oversight role could promote the placement of legislators with these characteristics on key committees.

To that end, this Article presents the first study of the connection between committee characteristics and oversight activity. Specifically, I explore the relationships between House oversight hearings and committee chairs’ legislative productivity, seniority, electoral security, and prior experience as a prosecutor or other lawyer. I find that chairs with longer tenures in office hold oversight hearings markedly more frequently. Chairs representing safe districts tend to engage in less oversight, perhaps because they lack the electoral imperative to engage in this resource-intensive work. Further, lawmaking and oversight are positively correlated, indicating that members see *ex ante* legislation and *ex post* oversight as complements, not substitutes—although the substantive size of this association is more modest. Finally, no relationship is apparent between hearings and the chair’s legal training or prior work as a prosecutor. Because my analysis is limited to the House, all of the above conclusions are limited to that chamber as well.

This Article proceeds in three familiar parts. Part I introduces a set of hypotheses regarding the traits of committee chairs that may be associated with greater oversight. Part II lays out the research design to test these hypotheses. Part III presents the results.

II. HYPOTHESES

This Article examines four characteristics of committee chairs that may be associated with those chairs’ propensity to hold oversight

Conyers (D-MI) referring to oversight as Congress’s “most ignored duty”); James A. Thurber, *What’s Wrong With Congress and What Should Be Done About It?*, in *CAN GOVERNMENT BE REPAIRED?* (Iwan Morgan & Philip Davies eds., 2018).

3. See Lee Drutman, *If Congress Is Truly Going to Check Executive Power, It Needs to Allocate More Money for Staff*, VOX (Dec. 15, 2016), <https://www.vox.com/polyarchy/2016/12/15/13971320/congress-executive-power-check>; Kevin Kosar, *Six Ways Congress Can Curb a Runaway President*, POLITICO (Jan. 21, 2017) <https://www.politico.com/agenda/story/2017/01/six-ways-congress-can-curb-a-runaway-president-000284>.

4. See Brian D. Feinstein, *Congressional Government Rebooted: Randomized Committee Assignments & Legislative Capacity*, 7 HARV. L. & POL’Y REV. 601 (2013).

hearings: legislative activity, seniority, electoral security, and prior professional experiences. I focus on House authorization committee chairs—rather than, e.g., the committee’s entire membership or its majority-party membership—because of the privileged position that the chair holds in deciding whether to schedule an oversight hearing.⁵ The chair is responsible for setting the committee’s agenda, hiring and supervising staff, and presiding over hearings.⁶ Thus, according to Professor Andrew Wright, “[i]n matters of oversight, no one looms larger than the chair.”⁷

First, I hypothesize that chairs that engage in greater legislative activity are more likely to convene oversight hearings. This potential connection between lawmaking and oversight goes beyond simply the notion that chairs who vigorously pursue one form of congressional activity are more likely to vigorously pursue another—i.e., that a legislative “workhorse” likely is also to be a dogged monitor of the executive branch.⁸ In other recent work, I demonstrated empirically that oversight gets its bite from an implicit threat of legislative sanctions should the overseen agency not comply with committee demands.⁹ In order for oversight hearings to be credible, there must be some prospect

5. See DANIEL CARPENTER, REPUTATION AND POWER: ORGANIZATIONAL IMAGE AND PHARMACEUTICAL REGULATION AT THE FDA 333 (2010) (“The committee in question—particularly its chair—establishes the agenda for a hearing, including the list of witnesses and the questions that will be posed.”); WALTER J. OLESZEK, CONGRESSIONAL PROCEDURE AND THE POLICY PROCESS 121 (10th ed. 2015) (“The decision to hold hearings is the fundamental prerogative of committee chairs.”).

6. Andrew Wright, *Congressional Due Process*, 85 MISSISSIPPI L.J. 401, 415 (2015).

7. *Id.* at 406. At the subcommittee level, most committee rules provide that subcommittees are authorized to conduct hearings only after consultation with the full committee chair. See, e.g., HOUSE COMMITTEE ON AGRICULTURE, RULES AND JURISDICTION, RULE XI(f) (2015), <https://agriculture.house.gov/about/rules-and-jurisdiction.htm>; RULES OF THE COMMITTEE ON WAYS AND MEANS, RULE 10 (2015), <https://waysandmeans.house.gov/wp-content/uploads/2015/11/11th-WM-Rules-Adopted-118115-.pdf>. But see RULES OF PROCEDURE, HOUSE COMMITTEE ON THE JUDICIARY, RULE III (2017), https://judiciary.house.gov/wp-content/uploads/2013/07/115th_Rules_of_Procedure.pdf (subcommittee chairs are empowered to schedule hearings without prior authorization from the full committee chair).

8. See DAVID PRICE, THE CONGRESSIONAL EXPERIENCE 64 (2000) (distinguishing between “workhorses” and “showhorses” in Congress).

9. Brian D. Feinstein, *Congress in the Administrative State*, 95 WASH. U. L. REV. (forthcoming 2018); accord DAVID R. MAYHEW, CONGRESS: THE ELECTORAL CONNECTION 111 (1974) (“[Legislators] can affect the way legislation is implemented by giving postenactment cues to the bureaucracy. Behind the cues lies the threat of future legislation, but in a relation of anticipated responses the cues may be sufficient.”).

of legislative sanctions.¹⁰ If legislative sanctions are not within the realm of possibility—whether because of the chair’s indifference or incompetence, or because of gridlock writ large or some other reason—then we should expect to see fewer oversight hearings. Accordingly, I expect legislative activity and oversight hearings to be positively correlated.

At first glance, the hypothesis that prolific lawmakers will also be zealous overseers may seem obvious. Not so. Another school of thought suggests that lawmaking and oversight are substitute goods. “The thing about oversight is that you could do it yourself,” observed Senator Chuck Grassley (R-IA), who has emphasized bureaucratic fraud and waste throughout his career. “You don’t need 51 votes to do it.”¹¹ A Congressional Quarterly profile of Senator John McCain (R-AZ) offers an example of this logic. The profile’s author notes that much of McCain’s legislative agenda has languished, due to McCain—in the 1990s and early 2000s—being “a despised figure in the Senate, even among fellow Republicans.”¹² With fewer legislative opportunities, McCain turns to oversight hearings to make his voice heard: “even if his legislative aspirations come up short, as they often have, the [Commerce Committee] chairmanship gives him a bully pulpit from which to promote ideas.”¹³ This rationale indicates that at least some officeholders think of lawmaking and oversight as substitutes, not complements.

Second, the chair’s length of service in the House may be associated with greater oversight activity. In one sense, this hypothesis is a corollary to the first hypothesis, in that seniority in the chamber is a rough proxy for legislative opportunities. From Professor Richard Fenno’s observation, a generation ago that junior legislators observe a norm of deference to their more senior colleagues to Professor Richard Hall’s more recent finding that seniority is positively correlated with participation in legislative markups, a large academic literature describes the disproportionate influence that more senior representatives have in the legislative process.¹⁴ Going further, longer tenures in office may enable legislators to master the specialized skill of conducting oversight

10. *Id.* “Legislative sanctions” refers not only to changes to an agency’s organic statute, but also budget cuts and efforts to delay or withhold Senate confirmation of future nominees. *Id.*

11. Terence Samuel, *The Hawkeye on the Hill*, U.S. NEWS & WORLD REPORT (June 15, 2003).

12. *Senator John McCain*, CQ POWER PLAYERS 2001 (Dec. 30, 2000).

13. *Id.*

14. See RICHARD HALL, PARTICIPATION IN CONGRESS (1996); Richard F. Fenno, *The House Appropriations Committee as a Political System: The Problem of Integration*, 56 AM. POL. SCI. REV. 310 (1962).

hearings and to deepen relationships with agency personnel and committee staff—all of which may increase the likelihood that their hearings will succeed.¹⁵

Third, chairs facing competitive elections will conduct more oversight. Political scientists place the reelection motive firmly at the center of their explanations of representatives' behavior.¹⁶ Because members in competitive districts may be more likely to find, all else equal, that the electoral benefits of oversight outweigh the associated time and resource costs, we should expect to see committees whose chairs won their most recent election by a relatively small margin engage in more oversight than committees chaired by a legislator in a safe seat.

Fourth, chairs with past professional experience as attorneys and, more specifically, as prosecutors, will conduct greater oversight. The skillset involved in conducting congressional oversight—e.g., issuing document requests, interviewing or deposing individuals and perhaps issuing subpoenas, and examining witnesses in a public forum—resembles that of a prosecutor preparing for and participating in a trial.¹⁷ Accordingly, I expect those chairs that either have experience as prosecutors—or at least exposure to these investigatory methods via legal training—will engage in greater oversight.¹⁸

Having outlined these four hypotheses, I turn to the study's research design.

III. RESEARCH DESIGN

This Article examines the connections between key characteristics of the chairs of House authorization committees and those committees' oversight activities during the 2011–2015 period. To facilitate comparisons among a set of committees with broadly similar functions, I

15. See Stanley Bach, *Incentives and Opportunities for Oversight: Comparative Implications of the American Congressional Experience*, at *7 (Aug. 2000) (unpublished paper presented at the 2000 World Congress of International Political Science), <http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/USCongressOversight.pdf> (describing how experienced committee chairs facilitate oversight). *But see* Diane Duffin, *Explaining Participation in Congressional Oversight Hearings*, 31 AM. POL. RES. 455 (2003) (finding that seniority is not a significant predictor of participating in oversight hearings).

16. See generally MAYHEW, *supra* note 9.

17. See Carl Levin & Elise J. Bean, *Defining Congressional Oversight and Measuring its Effectiveness*, 64 WAYNE L. REV. (forthcoming, 2018) (describing oversight mechanisms).

18. Cf. Nicholas Carnes, *Does the Numerical Underrepresentation of the Working Class in Congress Matter?*, 37 LEGIS. STUD. Q. 5, 19 (2012) (reporting correlations between legislators' prior professional identities and their behavior in Congress).

focus exclusively on authorization committees. Authorization committees set permitted funding levels for government programs within their jurisdictions.¹⁹ Their oversight and investigatory jurisdiction is coextensive with their legislative jurisdiction. While other committees conduct oversight—the House Committee on Oversight and Government Reform quickly comes to mind—restricting this study to authorization committees encourages cross-committee comparisons.²⁰

I focus on the House because committees play a prominent role in that chamber's lawmaking and oversight functions—which cannot be said to the same extent for the Senate. Whereas, in both chambers, oversight is conducted almost exclusively in committees and subcommittees,²¹ these units play a smaller role in lawmaking in the Senate than in the House. The typical senator juggles almost twice the number of committee assignments as her counterpart in the House.²² House committees serve as legislative gatekeepers;²³ in the Senate, by contrast, legislation can be introduced directly on the floor through the use of riders.²⁴ Differences between the chambers in terms of the level of seniority needed to chair a subcommittee and the privileged position that committee members enjoy during floor debates provide further indicia of the more powerful role that House committees play in the legislative process.²⁵ This greater role indicates that House committees and subcommittees will provide a cleaner test than their counterparts in the Senate of the connection between oversight and lawmaking.

The Article is further restricted to the 2011–2015 period, which corresponds to the 112th Congress through the end of the first session of the 114th Congress. Party control of the House and White House was

19. VALERIE HEITSHUSEN, CONG. RESEARCH SERV., RL98241, COMMITTEE TYPES AND RULES 1 (May 2, 2017), <https://fas.org/sgp/crs/misc/98-241.pdf>.

20. Note, however, that the Committee on Oversight and Government Reform also holds legislative turf over, e.g., Census Bureau operations and government-wide compliance with the Paperwork Reduction Act, among other subjects. H.R. COMM. ON OVERSIGHT AND GOV. REFORM, 115TH CONG., RULE 6 (2017), <https://oversight.house.gov/wp-content/uploads/2017/01/OGR-Cmte-Rules-115-FINAL.pdf>.

21. Carl Levin & Elise J. Bean, *Defining Congressional Oversight and Measuring its Effectiveness*, 64 WAYNE L. REV. (forthcoming, 2018) (“[M]ost Congressional oversight investigations have been undertaken by a committee or subcommittee[.]”).

22. ROGER H. DAVIDSON, ET AL., CONGRESS AND ITS MEMBERS 176 (14th ed. 2013).

23. Legislation within a committee's jurisdiction that the committee opposes can be discharged from committee for a floor vote only with the approval of 218 legislators. RICHARD S. BETH, CONG. RESEARCH SERV., RL97552, THE DISCHARGE RULE IN THE HOUSE: PRINCIPAL FEATURES AND USES (Jan. 30, 2003), https://www.everycrsreport.com/files/20030130_97-552_3544eac4de5cc1279b5b5ede3945cf14c5602dd7.pdf.

24. DAVIDSON ET AL., *supra* note 22.

25. *Id.*

consistent throughout this period. Thus, partisan dynamics—which likely are a key driver of congressional oversight decisions²⁶—are held constant. Due to data limitations, the study could not be extended through 2016, the final year of a Democratic presidential administration and Republican speakership.

The following table provides an overview of the included committees:

26. See generally Daryl J. Levinson & Richard H. Pildes, *Separation of Parties, Not Powers*, 119 HARV. L. REV. 2311 (2006).

Table 1: Included House Committees, 2011–2015 (112th–114th Congress, 1st Session)

<i>Committee</i>	<i>Chairs</i>
Agriculture	Frank Lucas (R-OK), 2011–2014; Michael Conaway (R-TX), 2015
Armed Services	Buck McKeon (R-CA), 2011–2014; Mac Thornberry (R-TX), 2015
Ed. & the Workforce	John Kline (R-MN), 2011–2015
Energy & Commerce	Fred Upton (R-MI), 2011–2015
Financial Services	Spencer Bachus (R-AL), 2011–2012; Jeb Hensarling (R-TX), 2013–2015
Homeland Security	Peter King (R-NY), 2011–2012; Michael McCaul (R-TX), 2013–2015
Internat'l Relations	Ileana Ros-Lehtinen (R-FL), 2011–2012; Ed Royce (R-CA), 2013–2015
Judiciary	Lamar Smith (R-TX), 2011–2012; Bob Goodlatte (R-VA), 2013–2015
Natural Resources	Richard (Doc) Hastings (R-WA), 2011–2014; Rob Bishop (R-UT), 2015
Science	Ralph Hall (R-TX), 2011–2012; Lamar Smith (R-TX), 2013–2015
Small Business	Samuel Graves (R-MO), 2011–2014; Steve Chabot (R-OH), 2015
Transportation	John Mica (R-FL), 2011–2012; Bill Shuster (R-PA), 2013–2015
Veterans' Affairs	Jeff Miller (R-FL), 2011–2015
Ways & Means	David Camp (R-MI), 2011–2014; Kevin Brady (R-TX), 2015

Not included: Appropriations, Budget, Ethics, House Administration, Intelligence, Oversight & Government Reform, and Rules, Ways & Means

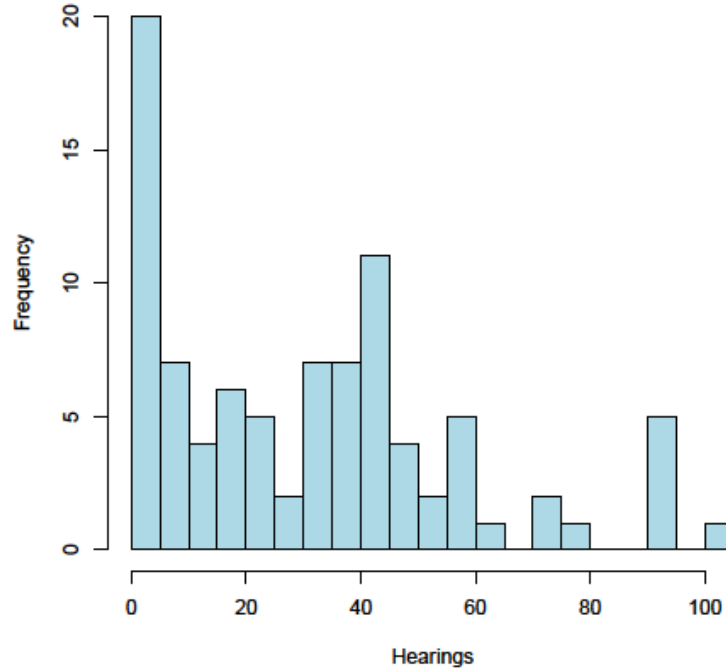
The number of oversight hearings held by each House authorization committee or subcommittee in each year during the 2011–2015 study period is the dependent variable. This information was obtained from a dataset of House hearings collected by the Comparative Agendas Project database.²⁷ I exclude all non-oversight-related hearings, e.g., those focused on appropriations and new legislation.²⁸

Figure 1 displays a histogram of hearings held by each of the 14 included authorization committees. The modal committee held zero oversight hearings in a typical year; at the upper end, the Committee on Energy & Commerce held 101 oversight hearings in 2011.

27. Frank Baumgartner & Bryan Jones, *U.S. Policy Agendas*, COMPARATIVE AGENDAS PROJECT, www.comparativeagendas.net/us (last visited May 5, 2018).

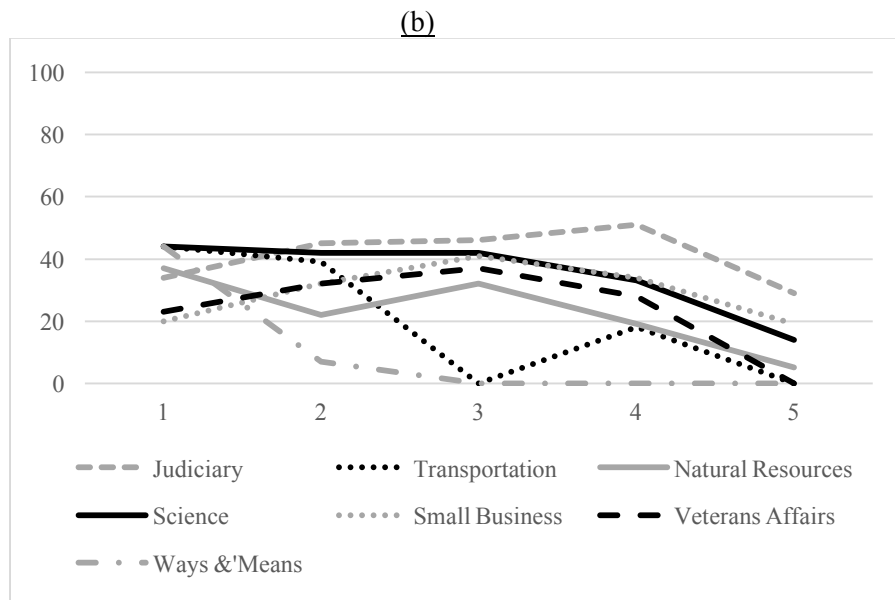
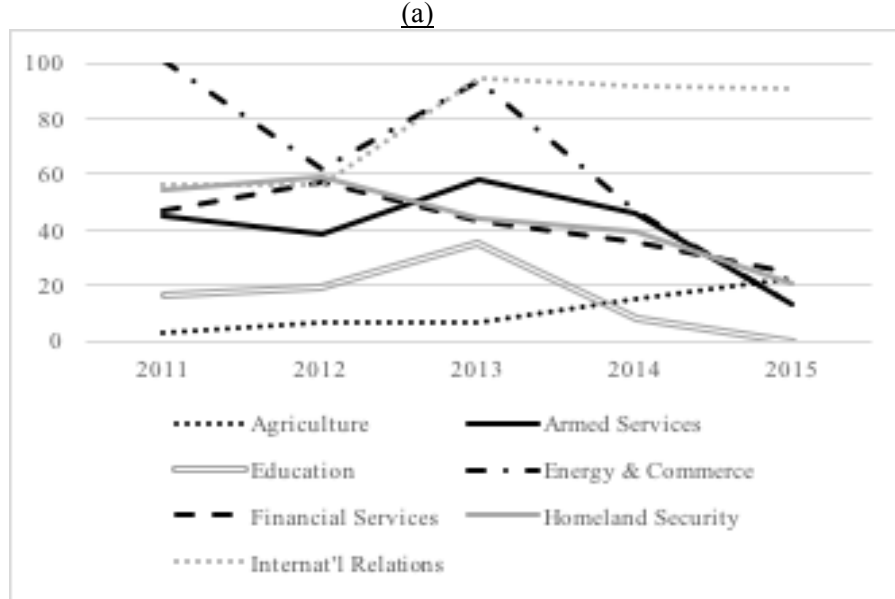
28. *I.e.*, using the Comparative Agendas Project coding, I exclude hearings related to bill referrals, appropriations, proposals to create a new program or agenda, and issues or legislations proposed by the President. I also exclude the limited number of House hearings that concern executive branch appointments.

Figure 1: Hearings Held Per Committee-Year, 2011–2015



Figures 2(a) and 2(b), below, provides a closer look at committees' oversight activity during the period under study. As the figures show, oversight activity is highly variable, both across committees and over time.

Figure 2: Committee Oversight Hearings by Year



To test the hypothesized relationship between oversight and legislation, I employ as independent variables two proxies for legislative

activity: the number of bills introduced by that committee's chair during his or her tenure in the House and the number of enacted bills that the chair introduced during the relevant year.²⁹ Testing the second hypothesis—that chairs with longer tenures in the House are more likely to convene oversight hearings—involves simply collecting data on the total number of terms of House service in the relevant year.³⁰ To test the third hypothesis—i.e., that chairs representing competitive districts conduct more oversight than chairs representing safer districts—I identified each chair's share of the two party vote in the most recent congressional election.³¹ Finally, the *Biographical Directory of the United States* provides information whether members serves as prosecutors (at any level) or hold a law degree.³²

Table 2 reports summary statistics concerning these variables.

29. See E. Scott Adler & John D. Wilkerson, CONGRESSIONAL BILLS PROJECT, <http://congressionalbills.org/download.html> (last visited May 5, 2018) (data on congressional bills by House sponsor); Baumgartner & Jones, *supra* note 27 (data on public laws by House sponsor with commemorative bills, e.g., bills to rename a post office, and all resolutions excluded).

30. See Charles Stewart III & Jonathan Woon, CONGRESSIONAL COMMITTEE ASSIGNMENT DATA, http://web.mit.edu/17.251/www/data_page.html#2 (last visited May 5, 2018) (data on committee chairs' names and lengths of House service).

31. See Clerk of the House, *Election Statistics, 1920 to Present*, HISTORY, ART, & ARCHIVES: U. S. HOUSE OF REPRESENTATIVES, <http://history.house.gov/Institution/Election-Statistics/Election-Statistics/> (last visited May 5, 2018) (congressional election data). The parties included in the two-party vote share are those with the two largest vote totals, which are not necessarily the Democrats and Republicans. *Id.*

32. Government Printing Office, *Congressional Biographical Directory*, <http://bioguide.congress.gov/biosearch/biosearch.asp> (last visited May 8, 2018).

Table 2: Summary Statistics

	Median	Med. Abs. Dev.	Min.	Max.
Hearings	32.0	28.2	0	101
Enacted Bills Introduced by Chair	3.0	3.0	0	32
Bills Introduced by Chair	25.5	17.0	3	77
Chair's Seniority (terms in House)	10	4.4	3	16
Chair's Vote Share ³³	68.1	10.0	53.7	98.1
<i>Chair has prosecutorial experience—12.9%</i>				
<i>Chair holds a J.D.—37.1%</i>				
<i>n = 70 committee yrs.</i>				

IV. RESULTS

The following figures provide a first-cut sense of the bivariate relationships between the interval variables (bills enacted, bills introduced, seniority, and vote share) and oversight activity. Each figure plots the number of hearings held on the y -axis, with each of the four independent variables, in turn, on the x -axis. For each figure, the first panel adds an ordinary least squares regression line depicting the linear relationship between that independent variable and oversight hearings. To account for the possibility that the relationship between each variable and oversight activity may be non-linear, the second panel includes a locally weighted, smoothed curve.

33. The figures reported for this continuous variable are means and standard deviations, rather than medians and median absolute deviations as reported for the other discrete variables exhibiting upward skew.

Figure 3: Oversight Hearings and Legislative Enactments

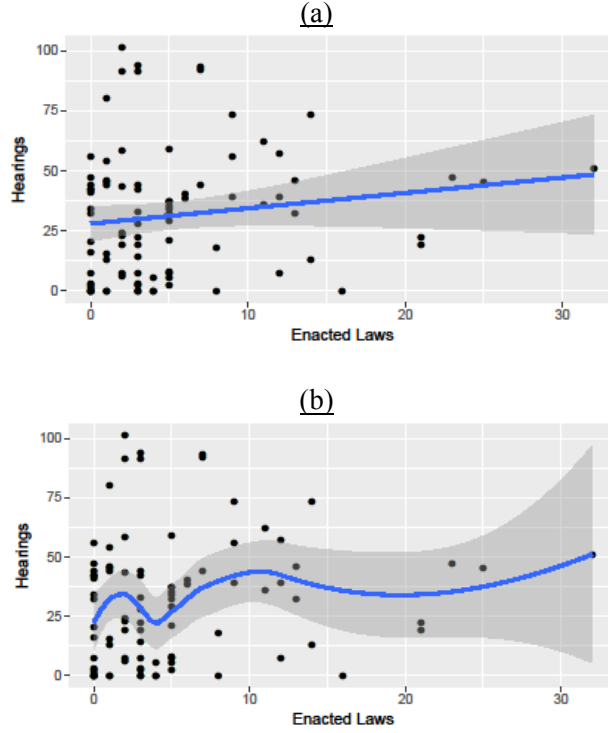
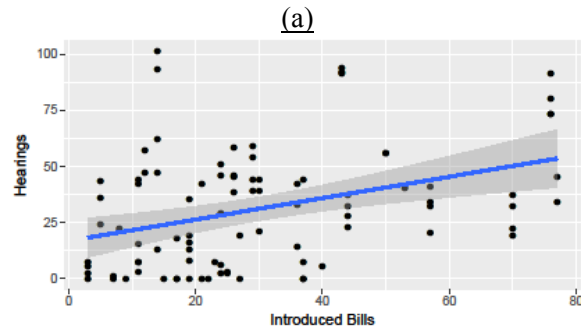


Figure 4: Oversight Hearings and Introduced Bills



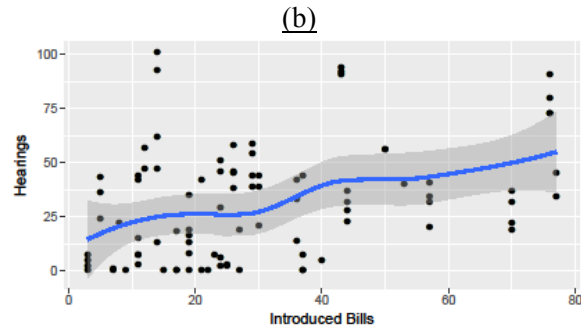


Figure 5: Chair's Seniority and Introduced Bills

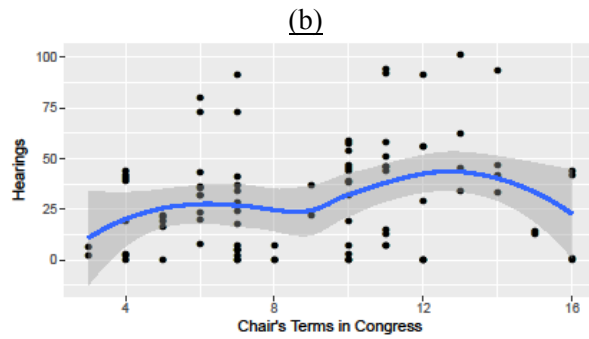
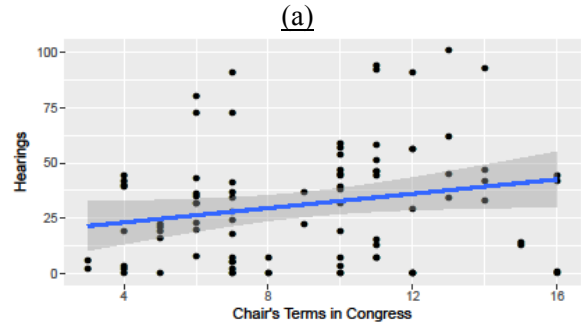
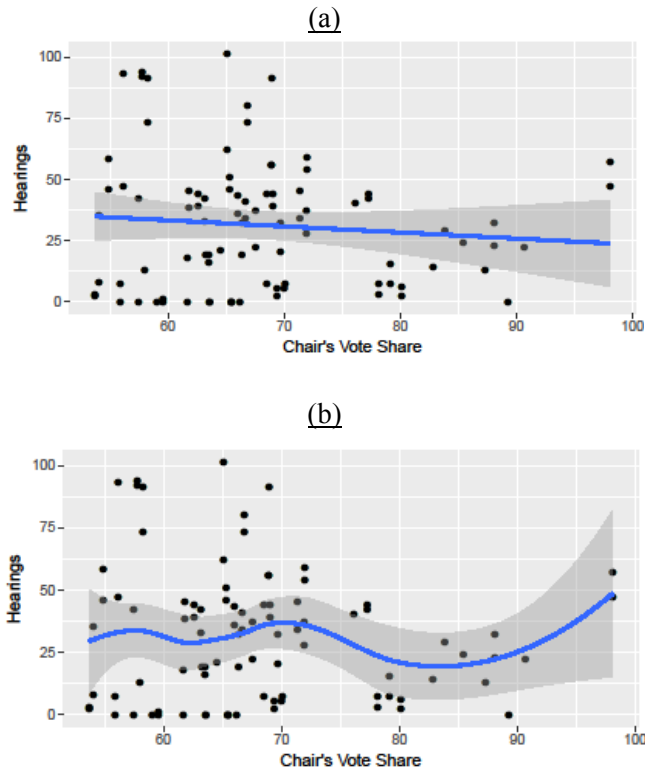


Figure 6: Oversight Hearings and Chair's Vote Share



Panel (a) in each of Figures 3–5 shows positive correlations between hearings and number of public laws introduced by the chair, bills introduced by the chair, and the chair's seniority. Further, panel (b) in each of these figures indicates that these correlations are positive in the regions where the bulk of the observations are located. Figure 6(a) displays a slight negative relationship between hearings and the chair's share of the two-party vote in the most recent congressional election. Figure 6(b) does not evidence any clear pattern within segments of the vote share data.

For a more complete understanding of the relationship between these characteristics and oversight activity, I turn to multivariate regression. The full regression model takes the following form:

$$\ln(Hearings_{cy}) = \alpha + \beta_1 * Laws_{cy} + \beta_2 * Bills_{cy} + \beta_3 * Seniority_{cy} + \beta_4 * VoteShare_{cy} + \beta_5 * Prosecutor_{cy} + \varepsilon_i \text{ where:}$$

- $Hearings_{ct}$ is the number of oversight hearings held in year y by House authorization committee c ;
- $Bills_{ct}$ is the number of bills that the chair of committee c introduced during his or her House tenure;
- $Laws_{ct}$ is the number of enacted bills that the chair of committee c introduced in year y ;
- $Seniority_{ct}$ is the number of terms of House service that the chair of committee c had completed by year y ;
- $VoteShare_{ct}$ is the chair's share of the two-party vote in the previous election;
- $Prosecutor_{ct}$ is a dummy variable taking the value 1 if the chair has prior experience as a local, state, or federal prosecutor; and
- ε_i is random error term for cy .³⁴

Table 3 reports the regression results. The first column reports the results of a series of bivariate models that include, in turn, a single one of the above independent variables. This first column also reports the results of a bivariate model examining the association between oversight hearings and whether the chair has a law degree (“*Law Degree*”). The second column presents the full, multivariate model expressed above. Because the value of *Law Degree* perfectly predicts the value of *Prosecutor*, only *Prosecutor* is included in this full model.

34. Poisson regression is appropriate where, as here, the dependent variable (hearings per committee-year) is an event count without an upper limit and over-dispersion is not present.

Table 3: Oversight and Legislative Activity & Capacity

	<u>Bivariate Models:</u>	<u>Multivariate Models:</u>
<i>Laws</i> (Enacted Bills Introduced by Chair)	0.018*** (0.003)	0.001 (0.003)
<i>Bills</i> (Bills Introduced by Chair)	0.014*** (0.001)	0.014*** (0.001)
<i>Seniority</i> (Chair's Terms of Service in HR)	0.051*** (0.005)	0.063*** (0.006)
<i>Vote Share</i>	-0.008*** (0.002)	-0.007** (0.002)
<i>Law Degree</i>	-0.245 (0.634)	—
<i>Prosecutor</i>	-0.230 (0.403)	-0.045 (0.741)
Adjusted R ²	see note	0.21
Observations	70	70

Unit of analysis: House committees in each year between 2011 and 2015. Dependent variable: Event count of oversight hearings per year. Model: Poisson regression. *** signifies $p < 0.001$, ** $p < 0.01$, * $p < 0.05$. Adjusted R² for bivariate models: *Laws* = 0.01, *Bills* = 0.03, *Senior* = 0.13, *Lawyer* = 0.01, *Prosecutor* = 0.00.

Overall, Table 3 shows a connection between oversight activity and legislative activity. In the bivariate models, the parameter estimates for *Laws* and *Bills* are positively signed and achieve conventionally accepted levels of statistical significance. The same is true for *Bills* in the full model—with a null result concerning *Laws* in this model.

A similar positive and statistically significant relationship exists between *Seniority* and hearings. Chairs with longer tenures in office tend to convene more oversight hearings.

Further, the negative and statistically significant coefficient estimates concerning *Vote Share* indicate that chairs holding safer seats are less

likely to hold hearings. When the chair has recently faced a competitive election and, presumably, views him or herself as less electorally secure in the next election—that chair is more likely to conduct oversight.

Finally, because the standard errors associated with the coefficient estimates for *Prosecutor* and *Law Degree* fall far short of statistical significance, one cannot reject the null hypothesis that these past professional experiences are unconnected to a chair's propensity to conduct oversight hearings.

The substantive interpretation of coefficient estimates in a Poisson model is not intuitive. For instance, the *Laws* bivariate model, a one-unit increase in *Laws* is associated with a greater number of hearings on the multiplicative order of $\exp(0.018) = 1.0182$. In other words, each additional enacted bill that the chair introduced is associated with a 1.82% increase the number of hearings held in that year. For ease of interpretation, Table 4 contains antilogarithmic transformations of the coefficient estimates in Table 3.³⁵

35. Because the standard error for *Laws* in the bivariate model and the standard errors for *Prosecutor* and *J.D. Degree* in both models dwarf the associated coefficient estimates in Table 3, I have omitted the anti-log transformation for these estimates in Table 4.

Table 4: Interpreting the Connection between Oversight and
Lawmaking

	<u>Bivariate Models:</u>	<u>Multivariate Models:</u>	
A one-unit increase in...	... is associated with a ___ increase in hearings		
<i>Laws enacted in the relevant year</i>	1.82%	—	
<i>Bills introduced during House tenure</i>	1.41%	1.41%	
<i>Terms of House service</i>	5.30%	6.50%	
<i>Percent of the two-party vote share in previous election</i>		0.80%	0.80%

The connections between oversight and the legislative productivity measures (*Laws* and *Bills*), while statistically significant, are modest in size. Further, the adjusted R-squared value for the *Laws* and *Bills* bivariate models (reported in Table 3) account for only 1% and 3%, respectively, of the total variation in committee oversight hearings held each year.

The relationship between oversight and chair seniority is more arresting. Each additional two-year term of House service for the committee chair is associated with a 5.30% increase in oversight hearings for that committee. In light of the fact that committee chairs' tenures during this period ranged from three terms to sixteen, that an increase of just a single term in office is associated with a 5.30% boost in oversight is noteworthy. The adjusted R-squared value for the *Seniority* bivariate model in Table 3 reports that this measure of the chair's seniority captures 14% of the cross-committee variation in oversight activity. Given all of the possible exogenous influences on oversight activity—most obviously, that agencies engage in a wide variety of activities that legislators may find objectionable³⁶—that the chair's

36. See Feinstein, *supra* note 9 (introducing the concept of “agency infractions,” or potential subjects for oversight hearings).

seniority accounts for approximately one-seventh of the variation in oversight hearings across committees is remarkable.

The connection between oversight and electoral security is also strong. Table 3 reports a statistically significant, negative association between oversight and *Vote Share*. Per Table 4, a one percentage point increase in the chair's share of the two-party vote in the previous election is associated with an expected 0.80% increase in oversight activity.

At first glance, that effect sounds small. But consider that the standard deviation for *Vote Share* is 10 percentage points.³⁷ A chair whose two-party vote share in the previous election was 58.1%—which is one standard deviation below the mean two-party vote share of 68.1%—can be expected to hold 8% fewer oversight hearings than would a chair at the mean. That difference is noteworthy. Jurists and scholars are well acquainted with how incumbent-protecting gerrymanders place democratic accountability at risk.³⁸ We should add to that list of harms the conclusion that placing incumbents in safe seats inhibits oversight activity.

V. CONCLUSION

This Article demonstrates that oversight activity is closely linked to both seniority and electoral competition. Further, a more modest connection is present concerning lawmaking and oversight, and no connection is evident between the chair's former legal experience and oversight. Taken together, these findings offer a blueprint to Congress. To augment the role that the legislative branch plays in administration after the passage of laws, Congress should appoint to committee leadership positions (i) longer tenured members and (ii) members representing relatively competitive districts. Somewhat counterintuitively, Congress's oversight activity also could be increased by appointing effective lawmakers to committee leadership positions, because legislation and oversight are complements, not substitutes.

Two notes of caution are in order. First, that this analysis focuses on the House during a period of divided government likely limits its generalizability to the other chamber or to periods of unified government.³⁹

37. See *supra*, Table 2.

38. See *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 471 n.10 (2006) (Stevens, J., concurring in part and dissenting in part) (describing how “[s]afe seats may harm the democratic process”).

39. Perhaps, as a commenter during this symposium suggested, chairs representing safe districts may be more likely to hold hearings during unified government, because these electorally secure legislators are less likely to fear electoral blowback from taking

Second, I recognize that these proposals ask reform-minded members of Congress to swim upstream. Since the 1970s, the House has seen a long-term, secular diminution in the role of seniority in committee leadership assignments.⁴⁰ In its place, ideological loyalty and fundraising ability now loom large in awarding committee chairmanships.⁴¹ Further, there are (slightly) fewer competitive House races these days than in the recent past,⁴² and the fundraising demands for legislators facing competitive races are such that, according to one House member, these legislators “have no idea what is going on in Congress.”⁴³ Finally, some legislators evince a disinclination to perform oversight work⁴⁴—especially, as now, during periods of unified government.⁴⁵ Still, to the extent that congressional reformers can encourage the elevation of more senior members and those representing competitive districts to committee leadership positions, doing so would pay dividends.

on a same-party president. Perhaps. But, alternatively, a chair representing a safe district may incur greater risk from challenging an executive branch controlled by the same party; the President is likely to be popular in such a district, which suggests the prospect of a primary challenge to an incumbent from a highly partisan district who takes on a same-party President.

40. See CHRISTOPHER DEERING AND STEVEN SMITH, *COMMITTEES IN CONGRESS* 49 (3rd ed. 1997); NELSON POLSBY, *HOW CONGRESS EVOLVES* 65 (2004).

41. See John F. Aldrich & David Rohde, *The Republican Revolution and the House Appropriations Committee*, 62 *J. POL.* 1 (2000) (discussing how party leaders use carrots and sticks to discourage chairs from deviating from the party line); Eleanor Neff Powell, *Money and Internal Influence in Congress* 5 n.4 (June 10, 2016) (unpublished manuscript),

https://scholars.org/sites/scholars/files/powell_money_and_internal_influence_in_congress.pdf (reporting that in the 2008 election cycle, the chairs of key committees were expected to raise, or contribute from their PACs, \$1.5 million to the Democratic Congressional Campaign Committee or related party organs).

42. Jason M. Roberts et al., *Party Committee Targeting and the Evolution of Competition in U.S. House Elections*, 26 *J. ELECTIONS, PUB. OPINION, & PARTIES* 96 (2016).

43. *Id.*

44. See Brian D. Feinstein, *Avoiding Oversight: Legislator Preferences & Congressional Monitoring of the Administrative State*, 8 *J.L. ECON. & POL'Y* 1 (2011).

45. Scott Wong, *House Oversight: A Gavel No One Wants*, *THE HILL* (Feb. 21, 2018), <http://thehill.com/homenews/house/374763-house-oversight-a-gavel-no-one-wants>.