

THE NATIONAL LAW JOURNAL

© ALM PROPERTIES INC.

WWW.NLJ.COM

MONDAY, NOVEMBER 20, 2006

ALM

OPINION

■ CONGRESSIONAL COMMITTEES

Overseeing oversight

By *Abbe D. Lowell* SPECIAL TO THE NATIONAL LAW JOURNAL

One unsuccessful Republican campaign tactic was to scare Americans about what Democrats taking over as congressional committee chairs would do with their new power. Even if Americans had focused on that inside-the-Beltway issue (as opposed to Iraq, terror, the economy and corruption), they would have seen that representatives such as John Dingell, D-Mich., John Conyers, D-Mich., and Charles Rangel, D-N.Y., and senators such as Robert Byrd, D-W.Va., Patrick Leahy, D-Vt., and Carl Levin, D-Mich., have decades of experience and track records of responsibility in the hundreds of hearings in which they have been involved. However ineffective the campaign tactic, it is still a good idea to reconsider the issue of congressional oversight before the gavels change hands. Out of respect for its constitutional role and the people's desire for change, Congress must have meaningful and effective oversight practices.

Over the past 12 years, real oversight hardly existed, as the Republican majority dealt with the president the way Britain's Parliament does with a prime minister of the same party. When there was any oversight, it was often ineffective and abusive. (Think of corporate executives being led into hearing rooms just so they would take the Fifth Amendment on camera, or Secretary of Defense Donald Rumsfeld being allowed to make speeches rather than answer questions about war planning and operations.) Too many hearings devolved into members creating sound bites for the media. There were exceptions, like the work of senators Susan M. Collins, R-Maine, and Joe Lieberman, D-Conn., on the response to Hurricane Katrina, but by and large the proper oversight hearing became a relic.

As the Democrats organize for the 110th

Congress, one reform that will both announce real change and, at the same time, make the process more effective will be prioritizing oversight subjects and ensuring that congressional procedures are fair. These are not mutually exclusive goals.

Priorities match election issues

Some have warned that Democrats will act like sweet-deprived kids in a candy store, sending waves of subpoenas to government officials and private corporate executives with no rhyme or reason. Even with pent-up frustration, a party that does not want to quickly lose the majority (and craves the White House in 2008) will act pragmatically in responding to a country demanding congressional responsibility, and will thereby prevent that indulgence. As the incoming Democratic leadership has stated, there will be plenty of focused and substantive inquiry, like exploring our country's intelligence capabilities; the rebuilding effort in Iraq; and the administration's actions with respect to civil liberties and individual freedom, tax credits and relief and pharmaceutical companies. These priorities match well with Election Day issues, and there will not be time for tangential topics or mere retribution.

In addition to making priorities among issues, the new leadership should spend time on restoring fairness and decorum to proceedings:

■ Nothing is gained (except prejudice) by requiring someone to attend a hearing so that he or she can be televised invoking the Fifth Amendment. Lawyers cannot do that in courts or in the grand jury, and it should not be allowed in Congress.

■ Speaking of lawyers, our society recognizes the need for people to seek and receive advice of

counsel. Real oversight issues are too important for Congress to bar a witness's counsel from addressing the committee while a client is testifying.

To use a well-known phrase, attorneys should be more than "potted plants" at hearings.

■ In all legal proceedings in our country, the parties exchange information before the trial or hearing. In Congress, too, hearings should not be conducted as trials by ambush. If the committee has something it wishes a witness to explain or answer, that witness should be given the same rights that he or she would have anywhere else.

■ Finally, committee rules should give members time to ask real questions and create real interaction rather than provide only enough time for the representatives to make speeches condemning some practice at the expense of the witness sitting there.

Watershed elections like 1994 and now 2006 are truly statements that the country wants change. The party coming into power can use these elections to change business as usual in Washington. The best means for Democrats to do what they just were hired to do, and also be more effective, and, as a result, keep their majority longer, is to rethink the rules. Oversight is a good place to start. **NLJ**



ABBE D. LOWELL

Abbe D. Lowell, head of special litigation at New York-based Chadbourne & Parke's Washington office, has served as special counsel to the House of Representatives on ethics matters and the impeachment of President Clinton. He is reachable at adlowell@chadbourne.com, or 202-974-5600.

CHADBOURNE
& PARKE LLP

www.chadbourne.com

This article is reprinted with permission from the November 20, 2006 edition of THE NATIONAL LAW JOURNAL. © 2006 ALM Properties, Inc. All rights reserved. Further duplication without permission is prohibited. For information, contact ALM Reprint Department at 800-888-8300 x6111 or visit www.almreprints.com. #005-11-06-0016