

Major Investigations, Oversight Hearings, and Related Activities

In addition to its legislative functions, the House Committee on the Judiciary conducts oversight of federal policies and investigates allegations of wrongdoing by public officials and private citizens. Major oversight hearings and investigations conducted between 1947 and 1982 were discussed in the last published history of the Judiciary Committee, which is included as an appendix to this document. Since 1982, the Committee has continued to perform its important investigative and oversight functions; some of the major activities of the Committee and its subcommittees are discussed in detail below to demonstrate the significance, as well as the variety, of the issues under the jurisdiction of the Judiciary Committee. Major investigations and oversight activities were identified from press coverage as well as publications of the Judiciary Committee cited in full.

During the 98th Congress (1983–1984), the Subcommittee on Criminal Justice conducted a 17-month inquiry into police misconduct that included four days of public hearings. The subcommittee heard testimony from police officers, politicians, community activists and citizens who complained of police brutality in several cities. Three hearings were held in New York City, although the first was adjourned before any witnesses testified because of issues concerning crowd control. The inquiry resulted in a 24-page report, released November 14, 1984, that addressed the issues of racism in police misconduct and community relations.¹

The classic novel, *1984*, by George Orwell, depicted a future totalitarian society with an intensely intrusive government. To coincide with the year in which the novel's action is set, the Subcommittee on Courts, Civil Liberties and the Administration of Justice held five days of hearings in the 98th Congress on government restrictions, access to information, freedom of the press, and the erosion of privacy in the workplace. The subcommittee also conducted oversight of the Foreign Intelligence Surveillance Court, which had been created five years before and had never denied an application for electronic surveillance to gather foreign intelligence.²

In the 99th Congress (1985–1986), the Subcommittee on Crime investigated the mail and wire fraud case involving E.F. Hutton & Company. The New York brokerage firm pled guilty to fraud charges in May of 1985 in a plea bargain that led to a fine for the firm, but no criminal charges against any Hutton employees. As part of its oversight of the Justice Department's handling of white-collar crime, the subcommittee conducted seven hearings in 1985 to determine whether the Justice Department acted properly in agreeing not to indict any Hutton executives. Although congressional Committees can usually obtain the information they need without subpoenas, in this case the subcommittee issued a subpoena to obtain documents from Hutton. On October 14, 1986, the subcommittee approved

a report concluding that the Justice Department should have sought to apply criminal sanctions to Hutton officials.³

The Committee on the Judiciary is charged with the review and oversight of various categories of crime. In the 100th Congress (1987–1988), the United States Sentencing Commission submitted to the Congress sentencing guidelines for federal judges to apply to citizens convicted of any criminal offense. The guidelines, according to a 1984 statute establishing the Commission, were to take effect automatically unless Congress took some action to change them. The Subcommittee on Criminal Justice, held seven hearings in the summer of 1987 to examine the guidelines and sentencing reform in general, hearing testimony from scholars, judges, and members of the Sentencing Commission. A bill reported from the Subcommittee to modify the guidelines failed to gain the required 2/3 votes under the suspension of the rules on the House floor, and the new sentencing guidelines went into effect. The Subcommittee on Criminal Justice also reported a bill to improve the fine provisions of the Sentencing Reform Act of 1984 that became law in the 100th Congress (P.L. 100–185).⁴

The Subcommittee on Economic and Commercial Law conducted oversight of federal procurement reform, which proved to be a “major issue in 103rd Congress” (1993–1994).⁵ The Subcommittee reported that it carefully monitored reform initiatives in this area that fell within the jurisdiction of the Judiciary Committee, in particular issues relating to the protest system, contract disputes, and procurement integrity.⁶

Four subcommittees conducted hearings in the 104th Congress (1995–1996) relating to the “Contract With America,” a legislative program House Republicans had campaigned on when they gained control of Congress in the 1994 elections.⁷ The Subcommittee on the Constitution held two days of hearings on the proposal for a balanced budget amendment to the Constitution, and the full Committee reported out a bill on the subject. The Constitution Subcommittee also held a hearing on term limits for Members of Congress. The Subcommittee on Crime held hearings on several issues covered in the “Taking Back our Streets Act of 1995,” including funds for local governments to hire more police officers, death-row inmate appeals of their sentences, and mandatory minimum sentences for some crimes involving guns. The Subcommittee on Commercial and Administrative Law held two days of hearings on the regulatory practices and procedure of the “Job Creation and Wage Enhancement Act of 1995.” Finally, the Subcommittee on Courts and Intellectual Property held hearings on legal reform issues, including guidelines for determining punitive damages and product liability.

In the 104th Congress, the Subcommittee on Immigration and Claims held eight hearings, with more than 100 witnesses, to discuss problems and proposed solutions in the areas of illegal immigration and legal immigration, border security, detention and removal of illegal and criminal aliens, worksite enforcement of employer sanctions, the impact of illegal immigration on public benefits programs and the American labor force, visas overstays, verification of eligibility for employment and public benefits, and legal immigration reform proposals. These hearings led to the introduction of comprehensive

immigration reform legislation, which was enacted as the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) (contained in the Department of Defense Appropriations Act, 1997, P.L. 104–208). IIRIRA greatly expanded the tools of the INS to detain and deport aliens and to combat alien smuggling; ratified the forward deployment strategy for the Border Patrol devised by El Paso Border Patrol Chief Silvestre Reyes; authorized a major expansion of the Border Patrol; instituted expedited removal procedures; instituted measures to decrease asylum fraud and abuse of “suspension of deportation;” created firm and realistic sanctions for illegal aliens; created an enforceable affidavit of support for sponsored immigrants; reformed the removal process and placed limitations on judicial review.

On the general topic of immigration in the 105th Congress (1997–1998), the Subcommittee on Immigration and Claims held hearings on border security and deterring illegal entry into the United States, the improper granting of U.S. citizenship without conducting criminal background checks, the implementation of IIRIRA, and on the identification of criminal aliens. In November, 1997, the subcommittee held a hearing on the final report of the Commission on Immigration Reform.⁸ The Committee conducted an investigation into the death of Esequiel Hernandez, Jr., an 18 year old who was shot by U.S. Marines performing counter-drug border surveillance for the Border Patrol, concluding that his death was attributable to a series of failures on the part of Justice Department and Defense Department personnel who were negligent in providing training and preparing for the border surveillance mission, or who failed to respond adequately to an emergency situation as it developed. Also in the 105th Congress, the Subcommittee on Crime investigated implementation of the Communications Assistance for Law Enforcement Act of 1994 (P.L. 102–414). The subcommittee heard testimony from FBI officials as well as members of the telecommunications industry. The goal of the hearing was to evaluate the extent of the cooperation between the government and the telecommunications industry in implementing the act.⁹

The Subcommittee on Immigration and Claims held a large number of oversight hearings in the 106th Congress, including two hearings focusing on the terrorist threat along the Canadian border. The Committee also issued subpoenas twice in order to procure information from the Administration, once to ascertain the recidivism rate of released criminal aliens (37% of whom were determined to have been convicted of another crime in the U.S. after their release by INS), and once to make public an INS report that found that in the years immediately following a major amnesty for illegal alien enacted in 1986, there was a significant upsurge in illegal immigration.

The terrorist attacks of September 11, 2001, greatly affected the agenda of the Congress and its Committees, and the Judiciary Committee played a leading role in the investigation and oversight of federal agencies and programs designed to protect the public and prevent terrorism. For example, in the 107th Congress (2001–2002), Judiciary Committee staff reacted to concerns regarding information technology at the FBI by collecting information and holding regular meetings with FBI officials. In the spring of 2001, staff discussed with

the FBI the issue of obsolete and inadequate computer systems. Staff also visited the FBI's Criminal Justice Information Services Division to gather information on computer security and the effectiveness of information technology operations. In response to a letter from the Chairman and Ranking Member, the FBI's Information Services Division provided a detailed report (for Committee use only) that described deficiencies in the computer system and measures being taken to address them.¹⁰

The events of September 11 also directed the attention of the Committee to Immigration and Naturalization Service systems in the 107th Congress. The Committee focused its oversight resources on terrorism-related issues, such as conducting hearings on the INS's interactions with Los Angeles International Airport shooter Hesham Mohamed Ali Hedayet, INS's implementation of the foreign student tracking system, implications for transnational terrorism of the Visa Waiver Program, INS's notification of the approval of pilot training status for terrorist hijackers Mohammed Atta and Marwan Al-Shehhi, and the risk to homeland security caused by identity fraud and identity theft. The Committee conducted extensive oversight of the agency's operations for monitoring the entry and exit of visitors to the United States and several major information technology projects. The Committee visited INS offices and field locations to examine enforcement systems and daily operations. The extensive oversight informed the recommendations of the Judiciary Committee regarding the transfer of INS law enforcement functions to the new Department of Homeland Security.¹¹ The Homeland Security Act of 2002 (P.L. 107–196) transferred all INS functions, including law enforcement as well as immigration and citizenship services, to the newly created Department of Homeland Security.

In the 107th Congress, the Judiciary Committee also oversaw the implementation of The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act), comprehensive legislation enacted in response to the terrorist attacks. The law sought, in part, to prevent the entry of foreign terrorists into the United States, and created new crimes and penalties to be used against terrorists. It also sought to facilitate intelligence gathering and preclude the use of U.S. financial institutions for foreign money laundering purposes.¹² In 2002, the Committee collected responses from the Justice Department to a series of questions concerning implementation of the new law, particularly concerning the immigration provisions, information sharing between law enforcement and intelligence officials, and new investigative tools. The Committee received written responses from the Justice Department and disclosed that and other significant information obtained during its inquiry.¹³ Oversight of the USA PATRIOT Act continued, of course, into subsequent Congresses. The Committee held numerous hearings on facets of USA PATRIOT Act implementation and continued to gather additional information from federal officials in the relevant agencies. The actions reflect the stated goal of the Committee “to monitor the implementation of antiterrorism legislation, to conduct active oversight of the Department of Justice, and to ensure that federal law enforcement authorities are provided with the resources to effectively assess, prevent, and respond to terrorist threats while preserving fundamental liberties.”¹⁴

In the 108th Congress (2003–2004), the Committee also conducted oversight of the citizenship and immigration functions of the Department of Homeland Security which had been created in 2002. One example of the oversight in this area concerned the creation of a technologically-enhanced screening system to monitor travelers entry to and exit from the United States. The Enhanced Border Security Act of 2002 (P.L. 107–173) required that the Attorney General and Secretary of State issue visas with biometric identifiers by October 26, 2004. Biometrics are characteristics, such as fingerprints and facial features, that can be used for identification. The act also required the installation of technology that could read the new visas at all ports of entry by that date.¹⁵ In April, 2004, the Judiciary Committee held a hearing to determine whether the deadline for biometric visas should be extended. Secretary of State Colin Powell testified that the deadline could be extended to prevent any possible interference with foreign travel to the United States, and Secretary of Homeland Security Tom Ridge testified regarding the technological preparation necessary to meet the biometrics visa deadline. The hearing as well as other investigative work by the Committee led the Congress to extend the deadline for one year (P.L. 108–299). The Committee focused on the scourge of alien smuggling, illegal alien “sanctuary” policies, the security risks of the Western Hemisphere passport exception, the removal of alien sexual predators, and the level of the Administration’s commitment to immigration enforcement. The Committee also monitored the progress of U.S. Citizenship and Immigration Services in reducing the adjudication backlog of immigration applications and petitions.

Through its Subcommittee on the Constitution, the Committee also conducted oversight of the United States Commission on Civil Rights in the 108th Congress. In response to a request from the Committee, the Government Accountability Office issued a report in October, 2004, entitled “Management Could Benefit from Improved Strategic Planning and Increased Oversight.” The Chairmen of the House and Senate Judiciary Committees requested a financial audit of the Commission as well.¹⁶

In the 109th Congress, the Committee focused its oversight efforts on investigating the alien gang epidemic, the impact of immigration on job opportunities for American workers, the amount of resources being devoted to interior enforcement of our immigration laws, and the management of the Energy Employees Occupational Illness Compensation Program Act, enacted to compensate American workers who were exposed to toxins while working in our nuclear weapons production program.

¹ Sam Roberts, “A House Panel Will Hear Charges of Police Brutality to City’s Blacks,” *New York Times* (July 17, 1983), p. 1; Sam Roberts, “Koch Defends Police at Hearing on Brutality,” *New York Times* (Nov. 29, 1983), p. 1; Sam Roberts, “Panel Sees Some Police Racism in New York,” *New York Times* (Nov. 15, 1984), p. 1.

² U.S. Congress, House Committee on the Judiciary, *Report on the Activities of the Committee on the Judiciary of the House of Representatives During the Ninety-Eighth Congress*, First Session (GPO: Washington, 1984), House Report 98–1193, p. 51.

³ Douglas Frantz, “House Panel Hits E.F. Hutton Probe,” *Chicago Tribune* (Oct. 15, 1986), p. 10; Nathaniel C. Nash, “The Prosecutor-Legislator Stalking E.F. Hutton,” *New York Times* (Oct. 13, 1985), p. 78; U.S. Congress, House Committee on the Judiciary, *Report on the Activities of the Committee on the Judiciary of the House of Representatives During the Ninety-Ninth Congress* (GPO: Washington,

- 1987), House Report 99–1029, p. 120.
- ⁴ U.S. Congress, House Committee on the Judiciary, *Report on the Activities of the Committee on the Judiciary of the House of Representatives During the One Hundredth Congress* (GPO: Washington, 1995), House Report 100–124, p. 48.
 - ⁵ U.S. Congress, House Committee on the Judiciary, *Report on the Activities of the Committee on the Judiciary of the House of Representatives During the One Hundred and Third Congress, Second Session* (GPO: Washington, 1988), House Report 103–883, p. 70.
 - ⁶ *Ibid.*, p. 49.
 - ⁷ U.S. Congress, House, Committee on the Judiciary, *Calendar of Public Legislation* (GPO: Washington, 1996), p. 11.
 - ⁸ U.S. Congress, House Committee on the Judiciary, *Report on the Activities of the Committee on the Judiciary of the House of Representatives During the One Hundredth and Fifth Congress* (GPO: Washington, 1999), House Report 105–845, pp. 220–221.
 - ⁹ *Ibid.*, 111.
 - ¹⁰ U.S. Congress, House Committee on the Judiciary, *Report on the Activities of the Committee on the Judiciary of the House of Representatives During the One Hundredth and Seventh Congress* (GPO: Washington, 2003), House Report 107–807, pp. 136–137.
 - ¹¹ U.S. Congress, House Committee on the Judiciary, *Report on the Activities of the Committee on the Judiciary of the House of Representatives During the One Hundredth and Eighth Congress* (GPO: Washington, 2005), House Report 108–805, pp. 138–140.
 - ¹² CRS Report RS21203, *The USA PATRIOT Act: A Sketch*, by Charles Doyle.
 - ¹³ U.S. Congress, House Committee on the Judiciary, *Report on the Activities of the Committee on the Judiciary of the House of Representatives During the One Hundredth and Seventh Congress* (GPO: Washington, 2003), House Report 107–807, pp. 118–120.
 - ¹⁴ U.S. Congress, House Committee on the Judiciary, *Report on the Activities of the Committee on the Judiciary of the House of Representatives During the One Hundredth and Eighth Congress* (GPO: Washington, 2005), House Report 108–805, p. 88.
 - ¹⁵ CRS Report 31727, *Border Security: Immigration Issues in the 108th Congress*, by Lisa M. Seghetti.
 - ¹⁶ U.S. Congress, House Committee on the Judiciary, *Report on the Activities of the Committee on the Judiciary of the House of Representatives During the One Hundredth and Eighth Congress* (GPO: Washington, 2005), House Report 108–805, pp. 142–143.