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TECHNOLOGY MARATHON

**WHAT TO EXPECT DURING CONGRESSIONAL TESTIMONY:
A GUIDE FOR PREPARATION AND PROCEDURE**

Amanda B. Robinson, John F. Ring, Timothy P. Lynch

May 15, 2023 | 2:00–3:00 pm ET

Presenters



Amanda B. Robinson



John F. Ring



Timothy P. Lynch

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Agenda

- What is a congressional investigation?
- Why does Congress have this power, and are there limitations?
- What areas in the technology industry is Congress watching right now?
- What should you do if you find yourself in the crosshairs of an inquiry or investigation?

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Can They Do It?

Legislation and Precedent Overview

Congressional Power and Authorities

- Article 1 of the Constitution
 - Make laws
 - Declare war
 - Provide for public funds and expenditures
 - Impeachment
 - Approve presidential appointments
 - Approve treaties
- Oversight and investigations: “Implied power”

“Implied Power”

Federalist Papers No. 51 (1788)



“If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself.”



James Madison

US Supreme Court Agrees

- *McGrain v. Daugherty* (1927)
 - Investigation of Attorney General
 - Brother of Attorney General was held in contempt for not appearing before Senate committee
 - Held that Congress can:
 - Issue subpoenas
 - Compel witnesses to testify
 - Hold individuals in contempt
 - Presumption that congressional investigations have a legislative purpose

Limits of Congressional Powers



Is there a “valid legislative purpose”?

Attorney-Client Privilege and Work Product (?)

Bill of Rights

- **First Amendment**
- **Fourth Amendment**
- **Fifth Amendment**

Trends in Congressional Investigations

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Trends to Watch – Technology

1

Artificial Intelligence

Rapid acceptance of this technology outpaces regulations

2

TikTok

Limitations for federal contractors and government companies

3

Big Tech oversight/freedom of speech

Investigations into the use of recommendation algorithms and reported use of “blacklists,” “de-emphasizing,” and other means of “reduced distribution” of content from users

Trends to Watch – Technology

4

Section 230

Investigations into how the moderation practices that limit speech are used

5

Antitrust

Continued scrutiny on companies for favoring their own products or requiring outside vendors to only use their apps

6

Labor

Scrutiny of tech companies over labor practices, particularly in light of employee activism and union organizing in the sector

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Committees Wielding Investigative Power

Brief Overview

Relevant Committees – Senate

Senate Committee on the Judiciary



Chair
Richard Durbin
(D-IL)



Ranking Member
Lindsey Graham
(R-SC)

Senate Homeland Security and Governmental Affairs Committee

- Permanent Subcommittee on Investigations (PSI)



Chair
Gary Peters (D-MI)



Ranking Member
Rand Paul (R-KY)

Relevant Committees – Senate

Senate Committee on Commerce, Science, and Transportation

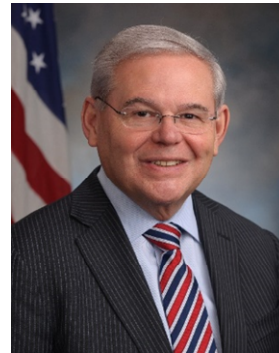


Chair
Maria Cantwell
(D-WA)

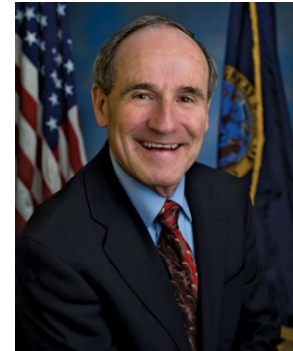


Ranking Member
Ted Cruz (R-TX)

Senate Foreign Relations Committee



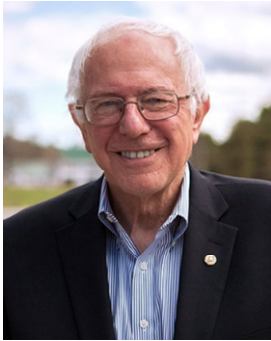
Chair
Robert Menendez
(D-NJ)



Ranking Member
James Risch (R-ID)

Relevant Committees – Senate

Senate Committee on Health, Education, Labor and Pensions



Chair
Bernie Sanders
(I-VT)



Ranking Member
Bill Cassidy
(R-LA)

Relevant Committees – House

House Select Committee on the Strategic Competition Between the United States and the Chinese Communist Party



Chair
Mike Gallagher
(R-WI)



Ranking Member
Raja Krishnamoorthi
(D-IL)

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House Committee on Oversight and Accountability



Chair
James Comer
(R-KY)



Ranking Member
Jamie Raskin (D-MD)

Relevant Committees – House

House Judiciary Committee



Chair
Jim Jordan (R-OH)



Ranking Member
Jerry Nadler (D-NY)

House Committee on Energy and Commerce



Chair
Cathy McMorris Rodgers
(R-WA)



Ranking Member
Frank Pallone, Jr. (D-NJ)

Relevant Committees – House

House Committee on Homeland Security



Chair
Mark Green (R-TN)

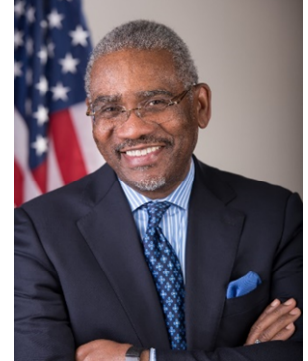


Ranking Member
Bennie Thompson
(D-MS)

House Committee on Foreign Affairs



Chair
Michael McCaul
(R-TX)



Ranking Member
Gregory Meeks
(D-NY)

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Practical Considerations

Cooperation, Coordination, Preparation

Practical Considerations: Cooperation

- Assess personalities, motivations, and focus of the investigation
- Get everyone beyond “can they do this” mindset
- Play the game and be nice
- Never underestimate Members or their staff
- Acknowledge inquiry immediately and seek to establish timetable
- Seek negotiated accommodations/compromises
- Meetings with staff may help
- Overt political campaign to derail investigation will not help

Practical Considerations: Coordination

Ensure that all stakeholders are appropriately involved in response

- Legal
- Communications/PR
- Government Relations

Identify related legal and reputational risks

- Political/Legislative
- Criminal
- Civil
- Administrative

Ensure that all relevant stakeholders are coordinating internal and external messaging

Practical Considerations: Preparation

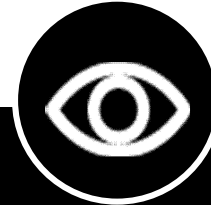


Develop proactive response plan **NOW**

- Who will coordinate
- Assign roles/responsibilities
- Training



Ensure appropriate individuals know the plan



Develop proactive monitoring of congressional and media outputs

Questions?

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Biography



Amanda B. Robinson
Washington, DC

+1.202.739.5579

amanda.robinson@morganlewis.com

Amanda focuses her practice on white collar issues, including congressional inquiries and governmental and internal corporate investigations. She handles a wide array of major corporate investigations and crises; her work is concentrated on defending clients in lawsuits and investigations arising under the False Claims Act, Foreign Corrupt Practices Act, as well as federal antitrust laws.

Amanda also counsels members of Congress, executive branch officials, and executive branch nominees regarding compliance with ethics laws and rules, including public financial disclosure statements and other disclosure obligations.

Earlier in her career, Amanda worked at the White House, where she provided direct support to US President George W. Bush. In addition to traveling with the president, she coordinated the flow of official documents, helped draft executive orders and briefing papers, and managed the speechwriting process.

Amanda served as a law clerk for the House of Representatives Committee on Ways and Means and the Senate Committee on the Judiciary, and as a judicial extern for Judge Richard Leon on the US District Court for the District of Columbia.

Biography



John F. Ring

Washington, DC

+1.202.739.5226

john.ring@morganlewis.com

John, a former Chairman of the National Labor Relations Board, advises clients on a wide range of labor and employment issues, focusing on labor-management relations matters. He provides clients with strategic business planning, particularly regarding union-related issues and corporate restructurings. He also represents management interests in labor-management relations, defends labor- and employee benefits–related litigation, and counsels on litigation avoidance strategies. John has an extensive background in negotiating and administering collective bargaining agreements, most notably in the context of workforce restructuring and multiemployer bargaining. His experience with congressional oversight while leading a federal agency provides unique perspectives for client matters involving Capitol Hill and other government entities.

Biography



Timothy P. Lynch
Washington, DC

+1.202.739.5263

timothy.lynch@morganlewis.com

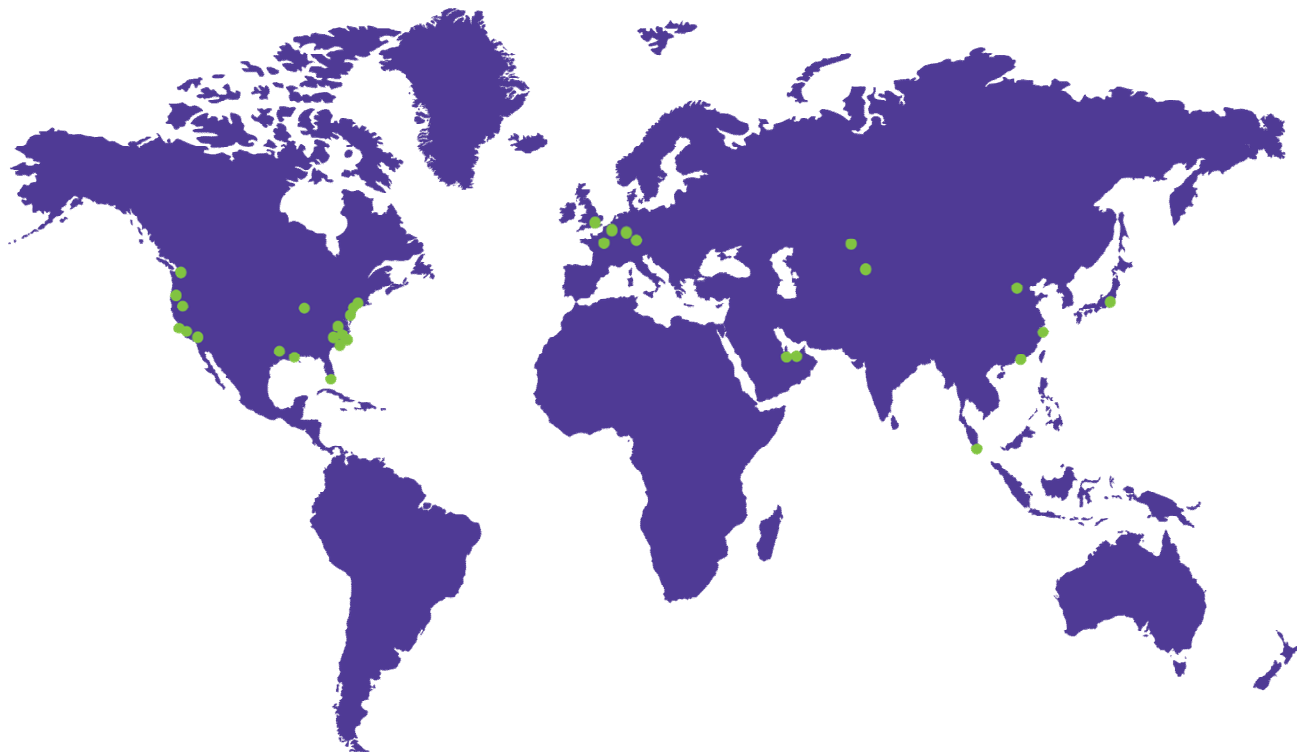
Timothy directs all activities, including the strategic and operational functions, of the Washington strategic government relations and counseling practice. He monitors legislative and political trends and developments, and manages lobbying registration and reporting, visits to government officials, and relationships with trade associations. In addition, Morgan Lewis's clients seek his advice on government relations and public policy issues.

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