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The perils of, and tips for, testifying in a congressional oversight hearing

By Christopher Armstrong and Dan Small

Congressional oversight is proving to be a main focus of the 118th United States Congress, with dozens of investigations already underway and congressional committees having held many more oversight hearings since the start of the current Congress. There are four main reasons for the significant uptick in congressional oversight. First, with Republicans controlling the House of Representatives and Democrats controlling the Senate, both parties enjoy committee gavels from which to pursue their separate oversight priorities. Second, with limited opportunities for legislative agreement between the houses, congressional oversight is a way each committee can devote its resources to score political and policy points. Third, for major legislation that does occur, in recent years, much of the policy decision-making has been pulled away from committees and into congressional leadership offices, giving committees less to do in terms of holding legislative hearings or markups—other than congressional oversight. Finally, in the age of cable news and social media, congressional activity has become increasingly performative in nature; there are few better ways for members of Congress to perform for the camera than an oversight hearing.

All of this leads to the likelihood that many more witnesses—from senior executives to everyday individuals caught up in political controversy—will be called before congressional committees. Although there is a wide range of oversight hearings—from those with a single witness under attack from both sides to multi-witness hearings about topics generally and not the witness specifically—all pose substantial risks to those called before a committee. To mitigate these risks and avoid common mistakes, it is important to understand the oversight hearing process, best practices for hearing witnesses, and thoroughly prepare with an experienced team.

The hearing process

Committees typically announce (or “notice”) hearings seven days beforehand; however, planning begins many weeks earlier. Once the committee chair and majority of staff have settled on a hearing topic, they will typically notify prospective witnesses several weeks beforehand to check availability and set a date. (Flexibility in this process will depend on the degree to which the hearing is hostile.) Although witnesses sometimes decline to appear, the committee chair on nearly every committee will have the power to compel appearances by subpoena should the committee decide to insist. (It’s worth noting, an appearance after initial declination nearly always increases the overall temperature on hearing day.)

On hearing day, the chair (the leading member from the majority party) and ranking member (the leading member from the minority party) will each give opening statements and introduce the witnesses. At that point, witnesses are allowed time for an oral opening statement, which is nearly always five minutes. Witnesses are

also allowed to provide lengthier written statements for the record. The chair and ranking member will start questioning the witnesses following opening statements. After both have asked their questions, committees typically alternate between majority and minority members by seniority, with each member usually having five minutes each to question the witnesses. Some will spend their full five minutes giving a speech, while others may have well-prepared, difficult questions for the witness. Most will fall in between.

While witnesses generally know their industry or issue area better than any committee member, members and their staffs will nearly always have the upper hand in an oversight hearing. They choose the subject of hearings and the witnesses, and they often have strategy meetings on the committee's approach to the hearing and prepare questions in advance. They will often know the likely answer to these questions and have prepared follow-up questions to push back on those answers. Witnesses without proper preparation are often caught off guard by the angles of attack the committee has planned. However, this can be mitigated by having experienced advisers with close relationships with the members and their staffs.

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