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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.

Common mistakes and how to avoid them

Witnesses in a congressional oversight hearing rarely—if ever—“win” a hearing, but often lose them. There are countless examples of oversight hearings that have gone very, very badly for witnesses, imperiling their personal reputations, the interests of their organizations, and often living in perpetuity on YouTube. The goal is not to win. The goal is to be prepared, responsive, and, ultimately, not worthy of social media. Nobody remembers the many oversight hearings with prepared witnesses who answered the questions well and went on with their lives and business afterward. That should be the goal.

Witnesses often make mistakes that can lead to greater challenges in an oversight hearing and greater risks generally. On one end of the spectrum, these mistakes include making statements that are trying to be responsive but are rushed; making assumptions; going beyond the scope of the question in ways that are not helpful; or offering additional, unnecessary information due to the natural human tendency to want to “fill the silence” in a pause after their initial response. The other end includes combative or untruthful responses or those in which the witness presents an inappropriate demeanor. Even the most experienced public speakers and senior executives—who believe they are well-equipped to testify—often make these mistakes in a congressional hearing room when taking hostile questions from dozens of inquisitors, at times on live television. These disasters can be generally avoided by following a few essential best practices.

Slow down

Slow the train down. Take your time, listen to the question carefully, and respond thoughtfully. The natural tendency in conversation is to keep a back-and-forth cadence, responding quickly at the end of the other person's sentence. But an oversight hearing is not a conversation, and your answers are on the record. Taking your time and thinking about the question before responding—without appearing to be trying to run out the clock on the questioner's five minutes—is in your best interest. It is challenging to take back a rushed answer.

Be relentlessly polite

While being polite might seem like obvious advice when interacting with Congress, it can be challenging after an hour or more of hostile questioning. In both body language and testimony, witnesses can often needlessly antagonize members during a hearing, which only makes the members more hostile and make witnesses appear defensive. This can distract you from the most crucial tasks of the day: listening, thinking, and responding to questions carefully. A witness who remains positive, polite, calm, and collected during intense and antagonistic questioning will often appear more honest and sympathetic than one who seems angry or defensive.

Tell the truth—it's harder than you think

The most obvious and fundamental rule for witnesses is to not intentionally lie to Congress. It is a crime, and notable former witnesses have faced prison time for doing so. But less obvious is the risk of honest misstatements, which complicate your message and lead to further questioning, creating the appearance of having intentionally lied—and a litany of other damage. These often occur through two common mistakes.

The first is when a witness answers a question they do not fully understand. Members might jumble their questions, make mistakes in delivery, or just have poorly written questions. If the question is unclear or you are in any way unsure of what they are asking, request that the member rephrase or restate the question. The witness's job is to answer honestly, not to guess what the member might have meant. If the witness is unable to get a satisfactory clarification, they can "own the question." In other words, rephrasing the question before answering or responding: "I am not certain exactly what you are asking, but what I can tell you is . . ."

The second is trying too hard and answering a question to which a witness does not know the answer. Members and their staffs have had weeks to prepare for the hearing and might ask witnesses about records created months or years earlier, statements the witness made long ago, or issues the witness does not know or does not remember. The best practice is to simply say you do not know or do not recall. There is nothing wrong with telling the member you do not know an answer and, if appropriate, saying you will look into the matter and respond in writing at a later date. Do not guess, because it is complicated for the committee to tell the difference between an incorrect guess and an intentional lie.

Know when to stop

In an oversight hearing, unless you are a government witness or an expert called to simply inform the committee, you are typically not there to inform the committee. You are more likely there because the committee chair wants to score points either by using your testimony or simply by challenging you. While it is vital that witnesses answer questions fully and truthfully, it is also important that they know when to stop. Generally, there is risk and little upside to volunteering information beyond the narrow lines of the question, filling in awkward silences, or volunteering information when a question has been directed at another witness. The process should be (1) question, (2) pause, (3) answer, (4) stop. If the questioner is hostile, you are very unlikely to win them over on the day of the hearing. Instead, you might add additional information that can lead to further lines of questions that you might prefer to avoid.

Prepare, prepare, prepare

Hearing preparation is often long, rarely a witness's favorite way to spend their day, and can be extremely tough. But it is critical. Hearing preparation with an experienced team involves first going over the rules for being a witness and then compiling every likely question, line of attack, and vulnerability of the witness—and going over them repeatedly. First, in meetings and then in several rounds of mock hearings, or "murder boards," the most effective hearing prep will be time intensive and difficult. The goal for the preparation is to be at least as tough as the hearing itself. When prepared thoroughly by an experienced congressional oversight team, a witness will know every likely question and possible attack beforehand and will have time to prepare answers thoughtfully rather than "winging it" on hearing day when the cameras are rolling.

Another key part of preparation is employing a team that has close relationships with the members of the committee and their staffs. These relationships can lead to valuable intelligence, generate helpful or friendly questions, and help to blunt whatever line of attack is likely to come on hearing day. By having a team that can educate members and staff ahead of the hearing, a witness will be better positioned to make a good impression

on hearing day.

Taking the hearing seriously, avoiding common mistakes, and having a team that can prepare you thoroughly, will better prepare you for the bright lights of the hearing room than the vast majority of witnesses who testify in congressional oversight hearings.

Takeaways

- Congressional oversight hearings present unique challenges and legal, political, and policy risks. Adequately preparing to testify at such a hearing requires a skilled and experienced team, as this is not your average public relations challenge.
- The 118th Congress is the most active oversight congress in recent memory and is investigating a broad swath of not only government officials but also government contractors, private businesses, and individuals.
- Testifying in a congressional hearing differs from giving testimony in court or being deposed. The lights are brighter, the stage is bigger, the questions are more unpredictable, and mistakes end up not only on the record but on cable news and YouTube.
- Careful preparation can often distinguish between a successful hearing and a disastrous one. Learning—and rehearsing—key fundamentals often make the difference.
- Slowing down, being polite, telling the truth, and preparing might seem obvious. But successful preparation will turn these rules into muscle memory.

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