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Crouching Hearing Hidden Legislation

Testimony in the Eyes of the Beholders



Testifying before a congressional committee is an integral part of an Inspector General's duties. Experienced Hill staffers offer OIG witnesses some pointers on making the experience a mutually rewarding (and, with a little luck, comfortable) one.

Keeping the Congress “fully and currently informed” about program deficiencies and areas for improving agency operations is an essential responsibility of Inspectors General. Beyond the torrents of audits, reviews, findings, and myriad other products that OIGs release, an invitation to testify before Congress presents IGs with an excellent forum to give voice and weight to their work. It is an opportunity IGs should welcome, but one that requires considerable deliberation and preparation to succeed.

Congressional hearings are a two-way street. From the witness table, an IG can personally focus the attention of policymakers to specific aspects of policy issues and emphasize the most significant results of their audits and investigations. A public hearing also gives Members a chance to question findings or respond to IG recommendations with divergent and critical views on behalf of their constituents. To assist the IG community in appearances before Congress, we asked a bipartisan array of experienced House and Senate committee staff to share their thoughts on what makes a good hearing witness and what common errors and pitfalls to avoid. From the perspective of the savvy specialists on the other side of the dais, we present some “do’s and don’ts” for OIG officials to consider before taking a seat at the witness table.

The Do’s

Deliver a Clear and Concise Message

This essential point was a strong theme among all the current and former committee staff interviewed. “A really good witness will limit testimony to things they truly know and will emphasize no more than a few points,” says a former committee chief counsel and legislative director. “It’s not necessary to be an orator” says the top aide to a current Senate committee chairman. “We’re looking for witnesses to present their views in the clearest possible terms, without all the verbiage and platitudes.”

Members must deal with literally scores of major policy issues, so they can’t be expected to be familiar with all the intricate details of IG activities, one committee coun-

sel points out. It is, therefore, important for IG witnesses to communicate in clear and concise terms, with supportive, well-organized facts. So, skimp on the jargon and administrative terms that people unfamiliar with your parent agency won't easily understand.

A Senate committee counsel observed that hearings are not immune to the "sound byte world" of modern politics. There is value in keeping oral statements short and punchy. He and several fellow committee counsels advocate that witnesses emphasize major points in oral testimony, but limit them in number. Repeating your key points is okay, as long as you're not redundant. Consider the point that the failure to "stay on topic" was cited by one House Staff Director as the biggest shortcoming with witnesses.

Play to Your Strengths—Your Expertise

Really good witnesses limit their testimony to what they truly know. They recognize it is okay to say they do not have an answer to a question, but will follow up after the hearing. Since Members are quite comfortable in straying from the issue to raise other matters of personal or committee interest, it is common for witnesses to be caught off guard by a question. The wide-ranging nature of many Q&A portions of a hearing can be unsettling. A counsel handling IG issues for an oversight committee advises, "Be cautious. You may get asked about anything. Resist any temptation to answer a question with a guess." But caution does not mean a witness should be inhibited in expressing sincerely held views during the Q&A period. A committee counterpart on IG issues believes that if a witness is "direct and honest, you'll gain the respect of the Members, which will help you in future appearances."

Know Thy Dais

When asked what were his keys to success in government, a former Secretary of State responded, "The three P's—preparation, preparation, and preparation." One Senate counsel emphasizes: "Be very cognizant of the views of the panel you are testifying before—not just the chair and senior Members, but junior and new committee members, as well. You'd be surprised at the lack of preparation by some witnesses," namely, that the witness was not ready for tough questioning from a Member who strongly objected to the testimony. "A good witness should have an idea of what other witnesses and Members will say. That can enable them to hone in on a good message," says a Senate counsel who has served for over a decade in both majority and minority roles.

To be properly prepared, committee staff suggests witnesses do their homework on Members' interests and questioning styles, and consult other executive branch officials experienced in testifying before the committee. Then, articulating your views well and engaging in an informed discussion with other witnesses present are the premier attributes of outstanding witnesses, according to one Senate

committee policy adviser. These witnesses actually listen to the others on their panel and adjust their comments accordingly. "If a witness can only stick to a prepared script, they should simply submit written testimony," says the adviser. A Senate counsel with extensive experience in IG issues comments, "IGs by and large do a very good job with testimony. We look forward to their appearance, because not having to clear their testimony through OMB results in more interesting and objective testimony."

Be Sure to Play By the Rules . . . the Committee Rules, That Is

Abiding by the committee's rules for timing and length of written and oral testimony is a good way to get off on the right—or wrong—foot. A late submission of testimony can aggravate Members and staff, especially if it interferes with Members' desire to be well prepared. One ranking Member closely involved with IG legislation reads all testimony the night before a hearing. A witness who misses submission deadlines may face several displeased Members when sitting down at the microphone.

Several Hill staffers recommend that witnesses call or visit their committee contacts before the hearing to see if there are special requirements or if testimony should address a particular issue. A senior official on one of the largest committees in the Congress advises witnesses to find out the various quirks of the panel: Can witnesses approach the dais before the hearing? Are charts and visual aids welcomed? Has agency staff done a test run in the hearing room for videos or PowerPoint presentations? These tips are seemingly obvious, but they address recurring problems, according to committee staff.

If permitted, introduce yourself and thank the Members before and after a hearing, two committee staff directors suggest. A touch of warmth or humor in the testimony can benefit a witness's reception by Members, according to an experienced minority staff director, especially with respect to IGs, who are accustomed to delivering serious and heavily fact-based presentations.

Egalitè Breeds Fraternitè

All witnesses want committee Members and staff to treat them fairly. A witness must earn this treatment by conveying views and information equitably to majority and minority committee staff before, during, and after a hearing. If majority staff request a briefing, suggest a joint briefing or provide a separate one for minority staff. Similarly, employ balance when commenting on legislation, says a Senate policy adviser: "If you're testifying on competing bills, be sure to discuss both, not just the one you support. Don't excessively praise one Member's bill and neglect the other side. Point out the good and bad in each." Likewise, demonstrate a concern for the difficulty Members face in sorting out policy options. A Senate oversight committee counsel adds, "If a witness must address a topic that

touches on partisan issues, be matter of fact and present your case. This will maintain your credibility.”

The word *credibility* was emphasized repeatedly by senior committee staff. “At the end of the day, all a witness has to offer the process is knowledge and credibility,” says a former committee chief counsel. “If you are viewed as knowledgeable and credible, you will generally find broad support regardless of party or point of view.” In the words of one aide to a Senate committee chairman, the key to fair treatment for a witness is, “Tell it like it is, while being respectful to the Members.”

The Don'ts

The Oral Statement: Don't Foul Off Your First Pitch

Virtually all of the many committee officials we interviewed mentioned their displeasure with witnesses who read their opening statement verbatim. One Senate counsel urges witnesses not to “squander the opportunity” that the opening statement presents—a few brief shining moments to stress the key points of your testimony. A cogent and concise presentation will also determine whether Members will come back to you in Q&A, and how much attention they will pay to your answers. Committee staff broadly agreed that witnesses should present their oral testimony in a conversational tone, limiting references to written notes and attempting to establish at least a modicum of eye contact with Members and staff.

House and Senate staff also lament witnesses who try to cover too much ground while reading a script in a monotone. Far more preferable is crafting your oral testimony as an abbreviated version of your written statement, focusing on the highlights, and delivering it in a more conversational style. Members want oral testimony to be a brief overview of major points, an IG Act veteran advises; Members can flush out details during the Q&A period.

It's Not All About You

While hearings present a valuable opportunity for IGs to present their findings and recommendations, the primary purpose is to offer a forum *for the Members* to publicly express their views and question witnesses on behalf of their constituencies. A top House committee official gives the institutional context: “Above all, remember the hearing has much more to do with giving the Members the opportunity to speak and be seen and heard, than it does with public enjoyment and consumption of your wisdom.” It is a strategic and significant error for witnesses to believe that *their* opinions and participation are the most important element of a hearing.

“The witness is not in the driver's seat at a hearing,” advises a counsel with service in both bodies, “and there will be consequences if they try to be.” A Senate counsel adds, “Hearings are to some degree orchestrated, and wit-

nesses may be assigned a role whether they know it or not. Witnesses *will* be challenged on their views and conclusions. That's what hearings are all about. Members may play to the cameras, the press, the folks back home, all to make a point.” That hearings are “part fact finding, part show” does not diminish their value as an essential part of legislative deliberations and open government. It does mean witnesses must be mindful of their subsidiary role in a hearing.

The Invisible Answer

“A really good witness is willing to answer questions directly and can translate bureaucratic mumbo-jumbo into a cogent and substantive message,” says one former committee counsel. In a perfect hearing, every witness will answer each question succinctly and directly. Realistically, most witnesses cannot. When the moment arises that a witness does not have an answer, as it invariably will, Hill committee staff advise against sidestepping or bluffing. One counsel named evasive answers as the most common witness error. “A Member may not follow up or repeat the question, but staff will know,” he says. An experienced senior committee counsel observes, “A Member may only have five minutes for questions. It frustrates them to watch their time tick away while a witness rambles on, particularly when they don't answer the question.” A witness who doesn't know the answer should offer to follow up and provide a written response for the record.

Conferring *briefly* with an agency colleague is generally viewed as permissible, as long as a witness doesn't do it frequently. One Senate committee official suggests a proactive role in addressing questions. “If you are testifying on a bill and don't like a provision in it, consider providing alternate language. If you simply say you oppose it, you are doing nothing to move the issue forward.”

Experienced Hill staff advise that there are times when the only “right” reply to a combative question is, well, exceedingly brief. “A Member may want an answer, but sometimes it can just be theatre,” says one Minority staff director who acknowledges the more dramatic aspect of the hearing process. “Members are adept at using Q&A time to give a short speech in the guise of a question in order to score points with the folks back home.” The staff director said a Member might vigorously challenge a witness *regardless* of their answer. The best strategy in these tense situations is to be very “brief, polite, and deferential.” Recommending that witnesses in the most contentious of moments respond without unnecessary elaboration, a top House committee official was a bit more illustrative: “Often a witness gets in trouble by giving the hounds a new scent to follow.”

When It Starts to Rain, Don't Make It Pour

Unquestionably the most difficult part of a hearing is treatment with rougher-than-kid gloves. An agency witness

should anticipate hearing at least one Member strongly object to the testimony or receive harsh rebukes for the perceived impact of recommendations on the Member's state, district, or constituency. House and Senate committee staff offered some valuable insights derived from years of observing witnesses in uncomfortably hot seats. Their paramount theme—witnesses must be courteous and deferential to Members at all times. Witnesses should not take harsh objections personally and should avoid an adversarial posture at all costs, realizing that each Member has constituencies to protect. Here's what they suggest when conflict is likely or at hand.

A Preemptive "Heads Up." Committee staff recommended that witnesses give Members or staff a heads-up to potentially troublesome aspects of their testimony by meeting in advance. Establishing an understanding and offering to discuss alternative approaches—without compromising your findings or recommendations—can lead to fair treatment at the hearing. "If staff are comfortable with and understand your argument," said a Senate committee staffer, "they may be less likely to steer their Member to an attack." If your recommendations are perceived to negatively affect a particular program that is near and dear to a Member's heart (or district), do your best to keep your focus on the credibility of your work.

Disagreements Will Happen. "Angering someone on the dais is invariably part of the process," commented an experienced Senate counsel. "Just don't be political in doing so. Present what you believe to be the truth and the facts." He added with a hint of relief, "Of course, I've never had to sit in that (witness) chair." If it is necessary to correct a Senator's or Representative's mistake, do so very delicately. Another counsel thinks it more prudent for a witness to clarify the disputed point in writing for the record, following the hearing.

Interrupting or rebutting a Member is rarely wise. Never argue, even if you are baited. If strongly challenged, committee staff suggest that witnesses limit their response to a respectful "we'll have to agree to disagree," and stop there.

Again, witnesses should understand they have a subordinate role to the Members within the hearing choreography. "Even if you're convinced you are right," advises a Senate staff director, "Members don't necessarily want to hear that. Showing deference is often preferable to standing up for a principle that is not being well received, legitimately or not." A House counterpart has a similar take: "Be respectful and acknowledge there are multiple sides to an issue. Express understanding that Members are entitled and expected to represent their personal views and those of their constituents."

Final Jeopardy. What, then, to do when despite the utmost exertion of reason, restraint, and professionalism, one continues to be buffeted by a vociferous and highly agitated Member? Ducking may be a natural reaction, but it is rarely an option. This is a moment where discretion must override valor. A former Senate counsel, now enjoying the relative serenity of the private sector, recognizes that tempests generally don't reflect poorly on the witness. "Candor and tact trump anger from a Member every time. It may be an unpleasant exercise, but as long as you are truly doing your job and doing it professionally, the other Members on the panel will see the anger as merely that."

Witnesses should neither expect nor seek the final word. That belongs to Members, whose views have been affirmed and ratified in our electoral process, and who face the arduous task of reconciling their votes amidst the wide spectrum of advice they have heard. Agency witnesses can take solace and pride in doing their best to assist policymakers with concise, informative, and respectful testimony. It is the public element of a job well done. That is, of course, until you receive a stack of detailed and comprehensive post-hearing questions. . . . 📖