



READY FOR YOUR CLOSE-UP

Political committee hearings are often an arena for the ritualistic humiliation of those called to testify. Executives can mitigate the risks by being prepared



— US CONGRESSIONAL COMMITTEE HEARINGS

A HIGH-STAKES GAME FOR THOSE CALLED TO TESTIFY

BY DAVID SELDIN AND ERIK HOTMIRE,
BRUNSWICK, WASHINGTON, DC

In the early 1950s, a series of hearings chaired by Estes Kefauver, a lanky, drawling Senator from Tennessee, became a political and media landmark in America, captivating the country in a way that no previous Congressional proceedings had.

The Senate Committee to Investigate Crime and Interstate Commerce (the “Kefauver Committee”) held its sessions in 14 cities across the country, hauling mobsters and their alleged accomplices in for questioning by Senators. Taking place at a time when television was becoming all-pervasive, the hearings were broadcast to live audiences that regularly exceeded 20m, and featured moments such as mobster Frank Costello nervously rubbing his hands together while “pleading the fifth,” and red-haired Virginia Hill Hauser, in a silver mink cape, coyly ducking questions about her dealings with Benjamin “Bugsy” Siegel and other leading organized crime figures.

It was pure theater and made a star of Kefauver, who went on to run on the Democratic Party ticket in 1956 as presidential candidate Adlai Stevenson’s running mate. The Kefauver Committee set the prosecutorial tone for subsequent hearings, which have included the notorious Army-McCarthy hearings, Watergate, the Fulbright hearings on Vietnam, and Iran-Contra.

In 1988, the “made for TV” nature of the proceedings was tacitly acknowledged when Congress opened the cavernous Central Hearing Facility in the Senate Hart Building, about which Senator Daniel Patrick Moynihan quipped, “I think we must have borrowed the design from the Supreme Soviet.”

Members of Congress have good reason to covet the attention that hearings bring. Not only are they an effective stage for ambitious politicians, but hearings can also function as a sharp-edged tool to advance a policy agenda. That fact was starkly demonstrated in 1994 when Ron Wyden, a member of the House Energy and Commerce Committee, ignited a firestorm with a simple, dramatic question to the chief executives of seven major tobacco companies: “Yes or no, do you

believe nicotine is not addictive?” If a video could be said to “go viral” in the pre-internet age, this one certainly did – the camera-ready scene played out over and over again on news broadcasts across America, and is now looked back on as a pivotal point in society’s long debate about tobacco regulation.

Congressional hearings are a high-stakes game for executives, as anyone who saw the ordeal endured by car executives in 2008 will recall. Flash back to the depths of the financial crisis, when General Motors and Chrysler were in dire need of help from government in order to avoid bankruptcy. CEOs were summoned for what promised to be an extremely high-profile hearing of the House Financial Services Committee. Even before the session began, a swarm of press homed in on the corporate jets that the executives used to ferry themselves to Washington. A populist frenzy was further stirred up by Committee members competing for TV air time. The situation went from embarrassing to humiliating when the politicians asked the CEOs if they would consider forgoing some of their hefty compensation as part of a bailout agreement – a question for which none of the executives seemed prepared. The already-weak public support for the aid package diminished considerably in the wake of the hearings.

The private jet debacle highlighted a critical communications issue: the disconnect between perceptions in the corporate and Washington worlds. Surprisingly, that risk was raised in internal discussions at lower levels at one of the auto companies, but was never considered seriously at headquarters.

“That whole hearing, we failed to match the tone to the circumstances,” says one car company adviser. “The company was very used to a style of communication that was all about projecting strength, and didn’t understand that what Members of Congress were looking for from an industry seeking this kind of help was humility. By not paying close enough attention to the audience and specific circumstance, the optics really suffered and we endured a serious setback.”

How do corporate leaders avoid getting snared in such traps? There are a few key things to keep in mind. Primarily, they should remember that it is a show – a show run by the politicians. Executives have had a tendency to approach these hearings as if they are taking an exam and spend their preparation time trying to cram facts and figures into their



“KNOWING YOUR STUFF
IS IMPORTANT.
BUT JUDGING
THE POLITICAL NARRATIVE
IS EVEN MORE CRITICAL”



You're not on the list

It's not exactly the hottest club in town, but look down the hallways outside Congressional committee rooms in the hours before hearings and you'll often see a group of fairly scruffy-looking, mostly young people waiting in a well-organized line.

Why are they there? You could be excused for thinking these are students, activists, or simply interested citizens, checking up on their legislators. But as hearing time approaches, the line transforms radically as the queuers are replaced by well-dressed lobbyists. It eventually becomes clear that the former were hired by the latter to reserve seats at the hearings, which are available to the public on a "first come, first serve" basis.

Congressional committee staff and the "line sitters" closely follow well-established rules of etiquette, and securing a seat is seen by lobbyists as an essential part of doing business. "So much work goes into getting ready for a big hearing, lobbyists don't have the time to stand in line for hours as they prepare," says Larry Harlow, a prominent lobbyist. "But you want to be sure to have a seat. Being in the room can make a big difference as a hearing plays out. You need to be there to protect your clients' interests."

Line sitting is an industry unique to Washington.

heads. Knowing your stuff is important but judging the political narrative is even more critical. If you want to know how to prepare for a Congressional hearing, look at the way most Members of Congress do it, which is to focus mainly on how to ask a question that will get TV time and advance their agenda.

Often, the primary goal of committee members in a hearing is to push a company representative to make some particular statement, whether one of contrition, or an acknowledgement of responsibility, or perhaps the acceptance of a "commonly-believed fact," regardless of the evidence.

Company representatives should avoid getting boxed into corners by understanding clearly what committee members are likely to be looking for, and formulating an acceptable response that they can deliver in the opening statement. Otherwise, they risk becoming hostage to the politicians' agenda.

Executives may ask whether they are compelled to testify. Although negotiations often take place with committee staff about who should appear and when, frequently the answer is "yes" – in effect, a subpoena; indeed sometimes it literally is one. Failure to appear can result in citation for contempt of Congress, which can result in financial penalties and even prison. Pleading the Fifth Constitutional Amendment right to decline to testify on the grounds that it may incriminate is possible, but obviously should be avoided in all but the most extreme circumstances.

Though it may seem obvious, company representatives should carefully run through a media appearance checklist in advance of a Congressional committee appearance:

- ✦ Body language and tone of voice communicate as much as words. It is vital to project the appropriate balance of respect and confidence.
- ✦ Don't lose patience. Each committee member will treat their five-minute question period as their own mini-hearing, which means witnesses get variations on the same question over and over. Stick to the script and go with the flow of the hearing.
- ✦ Prepare for protesters. The higher profile the hearing, the greater the likelihood it will be interrupted by chanting, sign-waving, or other forms of protest. Have a strategy for handling it. Generally, staying calm and keeping your attention on the committee chair works.
- ✦ Don't guess. It is always better to admit to not having a particular fact at your fingertips than to say something that turns out to be inaccurate. Promise to get the questioner the information later, and then make sure that the appropriate follow-up happens.

Dealing with elected officials who may lack knowledge of their business is a major challenge for executives. Allen Ertel, a successful entrepreneur who served three terms in Congress, sums up the problem: “The biggest difference between politics and business is that in business I don’t have to deal with people who don’t know what they’re talking about.”

CEOs spend most of their time meeting with people who are well briefed. Politicians, on the other hand, must engage frequently on issues of which they have scant knowledge. But showing up a Congressperson’s lack of knowledge is a risk not worth taking. It is best to show deference – and explain not lecture.

Understanding the media and political dynamics of a hearing can help CEOs not only avoid the pitfalls but advance their own agenda. Take the auto executives. A few weeks after their corporate jet fiasco, the same CEOs came back to Congress but this time better prepared. Ford CEO Alan Mulally – supporting his rivals’ request for funds – drove to Washington in a hybrid car and said he would take just \$1 in salary and sell Ford’s corporate jets if it ever needed bailout money. The funding for GM and Chrysler came through, and ultimately became a popular talking point in President Obama’s re-election campaign.

.....
David Seldin, a veteran of Capitol Hill and the White House, is a Director in Brunswick’s Washington, DC office, specializing in corporate reputation and public affairs.

Erik Hotmire is a Director in Brunswick’s Washington, DC office, providing strategic counsel in crisis, litigation and regulatory matters. He has served in senior positions at the White House, SEC and US Senate.

— UK PARLIAMENTARY SELECT COMMITTEES HOW TO AVOID GETTING PIE ON YOUR FACE

BY ANDREW PORTER, BRUNSWICK, LONDON

UK Parliamentary Select Committees used to be rather staid and sleepy affairs, concerning themselves primarily with the inner workings of government departments or arcane constitutional issues. In recent years, however, committees have been thrust into the public spotlight as their members have aggressively gone after big corporations and their high-profile executives.

We have been treated to such spectacles as media baron Rupert Murdoch declaring before the House of Commons

Culture, Media & Sport Committee, “This is the most humble day of my life,” before narrowly avoiding a protestor’s pie in the face thanks to the intervention of his wife Wendi, who was sitting behind him in the committee room.

Meantime, the Treasury Committee was the arena in which a leading banker was grilled so mercilessly that he took the unprecedented decision to hand back his knighthood after the committee issued its damning report. Sir James Crosby, formerly CEO of HBOS, reverted to plain old James.

Given the higher profile of some Parliamentary committees, Clerk of the House Robert Rogers, the House of Commons’ top adviser on procedure, issued a report last summer reviewing the powers of committees. As in the US, the UK House of Commons has the power to cite for contempt people who refuse to appear, though penalties are limited and rarely applied. The penalties for lying to the committee are more severe, though the decision to prosecute rests with the courts and the burden of proof is high. While Rogers’ report leaves open the question of whether committees should have greater powers, it notes that censure alone can do considerable reputational damage.

“In the nature of things, most people who fall foul of a select committee will be people in public life, or who in some way carry public responsibilities,” Rogers wrote. “The finding by the House of Commons ... that an individual is in contempt, and making specific criticisms of the individual’s conduct, must be hugely damaging to that individual.”

Writing for the London School of Economics’ (LSE) politics blog, Adam Lent, director at the Royal Society of Arts, and a former head of economics at the Trades Union Congress says, “Select committees have effectively become public courts where individuals are tried not on the veracity of their case but on how well they manage to perform in the committee room bear pit. And the sentence, should one’s performance not be up to scratch, can be a severely damaged reputation or even loss of employment.”

As in the US, politicians are well aware that the higher media profile their committees are enjoying is an excellent platform to advance political agendas.

Margaret Hodge, a Labour Party politician and chair of the powerful Public Accounts Committee, last November paraded executives from Google, Amazon, and Starbucks in front of the nation to ruthlessly probe their tax arrangements. This followed a report in October 2012 by Reuters which found that Starbucks had made “perfectly legal” tax payments of just £8.6m (\$13.3m) on £3bn (\$4.8bn) of coffee sales since starting business in the UK in 1998. ↗





“INDIVIDUALS ARE TRIED
NOT ON THE VERACITY
OF THEIR CASE BUT ON HOW WELL
THEY MANAGE TO PERFORM
IN THE COMMITTEE ROOM
BEAR PIT”

The committee hearing topped TV news broadcasts and millions saw the company executives struggling to deal with unexpected questions about the “morality” of the tax code – it was no longer sufficient to say simply “we obey the tax laws.”

Hodge says, “They were not prepared and came in with a certain arrogance. We called Starbucks and then it was a question of deciding who else. We actually looked through the newspapers to see who was paying the least tax. It was literally like that – rather fortuitous, but it could have been other companies.”

Hodge adds, “We are in a new world where the private sector plays a much bigger role in public life ... What these episodes show is that reputation matters.”

In the wake of the hearings, Starbucks said it would voluntarily pay more UK tax. “These decisions are the right things for us to do,” said Kris Engskov, head of Starbucks UK and Ireland. “We’ve heard that loud and clear from our customers.”

Members of committees and executives who have survived hearings say there are key points to remember when notified that you might be asked to testify:

- You could be informed of your appearance date just a few days before, so prepare as soon as you know you *might* be called.
- Research which committee members tend to ask the headline-grabbing questions, anticipate those questions and establish your response.
- Get the feel of the occasion – watch videos of previous committees or sit in on a hearing in the public gallery.
- Accept that the dice will be loaded against you.
- Be humble. This is a rare moment when backbench MPs have some authority, so let them have their moment.

Practitioners who have prepared executives for hearings say that the things that annoy committee members include:

- Ignorance. If you do not know the answer to a question, say so, and promise to send in a supplementary memorandum.
- Evasiveness. The Public Accounts Committee was recently so annoyed by a lawyer from HMRC (the tax office) that they

produced a Bible and forced him to give evidence under oath.

- Repetition. If you are appearing alongside other witnesses, do not repeat what they say. If you agree, say so, and move on.
- Jargon. It always brings a rebuke.

The power of committees has been growing in recent years, but it was the banking crisis that redefined their role as populist forums for politicians to vent anger on behalf of the public. A thorn in the side of the banks is Andrew Tyrie, the independent-

minded chair of the Treasury Committee. A former bank economist himself, he has demonstrated that he is prepared to go against fellow Conservative Party members, including Chancellor of the Exchequer George Osborne, in taking a hard line with bank executives, some of whom were dragged before the committee for what was essentially a public flogging.

Political grandstanding aside, it is important to recognize that at least some committee members feel a sense of duty in increasing their scrutiny, particularly in banking. As one bank adviser commented, “The select committees have stepped into a void. The regulators and ministers failed to hold business to account and so they are now doing it.”

The debate about growing committee powers continues, especially as new reforms are put in place to reduce their number but increase their power. Answering Adam Lent on the LSE’s politics blog, William Brett of Cambridge’s Judge Business School, says, “Select committees are able to operate in the ... space between the law and private entities. Ideally, their inquiries feed into the process of changing the law so that the public interest is not so compromised by otherwise relatively unaccountable blocs of power.”

In any case, it seems certain that the UK Parliamentary committee system is traveling down the same path as the US, where wider powers and a higher profile mean they pack a greater punch. “It is definitely moving that way,” says David Ruffley, a Conservative MP and a member of the Treasury Committee since 1999 who was critical of banking oversight from early on.

Business executives can’t say they weren’t warned. ☹

.....
Andrew Porter is a Director in Brunswick’s London office and specializes in public affairs and media. He is a former Political Editor of *The Daily Telegraph* in London.