

Testifying on the Hill: A Guide to Survival

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With recent wars, both cold and hot, safely disposed, there remains for the military officer only one great fear: that of being called to testify before a congressional committee. Though officers are always seeking an opportunity to excel, few of them relish the chance to travel to Capitol Hill and present themselves before the members and staff of Congress. "I'd rather have a root canal without anesthesia," is the way one combat-decorated colonel expressed it to me one day. I expect this feeling is well-nigh universal among career members of the military, and there are good reasons for such trepidation.

First of all, a hearing is not an equal contest. The congressional committee holds all the cards. Its members set the agenda, schedule the time, and tell you what they want you to talk about. They control the hearing room, and they invariably put you on a lower level physically, so that they can look down upon you from on high. If they are hostile in their questioning and you "win" the hearing on points by showing up one of the members or staff and making him look foolish, they have the last laugh when they cut your budget or punish you with report language that strips you of power and position.

Second, the committee will probably spend longer preparing for the hearing than you will, and they may know more about the subject of the hearing than you do. Just as you have staff—or perhaps you are the staff officer preparing your superior for the hearing—congressional committees also have professional staff members, some 2000 of them at the end of 1991. Many of these individuals are young, bright, and aggressive, while others are older and have as much experience as you do—perhaps more.

Third, though the committee staffers will probably do their best to tell you what they think the committee will want to know about, you can almost count on some member to ask a question that is totally off the subject. If you are unable to answer it, you can take shelter in the belief that there was

Report Documentation Page

Form Approved
OMB No. 0704-0188

Public reporting burden for the collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington VA 22202-4302. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to a penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number.

1. REPORT DATE 1993		2. REPORT TYPE		3. DATES COVERED 00-00-1992 to 00-00-1993	
4. TITLE AND SUBTITLE Testifying on the Hill: A Guide to Survival				5a. CONTRACT NUMBER	
				5b. GRANT NUMBER	
				5c. PROGRAM ELEMENT NUMBER	
6. AUTHOR(S)				5d. PROJECT NUMBER	
				5e. TASK NUMBER	
				5f. WORK UNIT NUMBER	
7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) U.S. Army War College, ATTN: Parameters, 122 Forbes Ave, Carlisle, PA, 17013-5238				8. PERFORMING ORGANIZATION REPORT NUMBER	
9. SPONSORING/MONITORING AGENCY NAME(S) AND ADDRESS(ES)				10. SPONSOR/MONITOR'S ACRONYM(S)	
				11. SPONSOR/MONITOR'S REPORT NUMBER(S)	
12. DISTRIBUTION/AVAILABILITY STATEMENT Approved for public release; distribution unlimited					
13. SUPPLEMENTARY NOTES					
14. ABSTRACT					
15. SUBJECT TERMS					
16. SECURITY CLASSIFICATION OF:			17. LIMITATION OF ABSTRACT	18. NUMBER OF PAGES	19a. NAME OF RESPONSIBLE PERSON
a. REPORT unclassified	b. ABSTRACT unclassified	c. THIS PAGE unclassified			

no reasonable way for you to have had the answer, but one of your superiors may still make you feel foolish for not having anticipated the question.

With this being the situation, why would anyone ever testify before a congressional committee? One answer, of course, is that you are invited to appear in the same way that the Internal Revenue Service invites you to respond to their request for additional information about your tax return. In the words of the Godfather, it is an offer you cannot refuse. Additionally, proposals to cut the DOD and service budgets will multiply in years to come, and there will be ever-increasing pressure on military officers and senior civilian appointees within the Department of Defense to troop to the Hill to defend and explain the President's budget requests.

So let's assume you have one of the invitations in hand. Perhaps it is for you, perhaps it is for your boss and you are the stuckee who is to prepare the testimony. If you are lucky, the hearing is far enough in the future that you can carefully prepare the testimony. If you are unlucky, it is two days hence, and you are in big trouble. Regardless of the time remaining before the hearing, the letter of invitation should at least give you the subject of the hearing and a committee point of contact, who will undoubtedly be a member of the professional staff of the committee.

The first thing to do is determine exactly what kind of hearing it is. There are four basic types, though you will probably encounter only the first three of them:

- *Legislative hearings.* These are hearings on a bill or other legislative proposal. Witnesses are invited to testify both for and against the legislation, giving their views or the views of their organizations. The executive branch is generally afforded the opportunity to testify before the relevant committee or subcommittee on any proposed legislation. If it is not specifically invited to do so, it may request the opportunity, and I cannot imagine that such a request would ever be denied.

- *Investigative hearings.* These are the ones you should dread the most. They are often generated as a result of a news report that alleges misconduct or malfeasance on the part of the executive branch. If you are really unlucky, your letter invites you to testify before the House Energy and Commerce Committee, chaired by Representative John Dingell of Michigan.

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Congressman Dingell is about as tough on executive branch witnesses as anyone on the Hill, and when your testimony is over, you still are not home free, because you may be the recipient of what are called “Dingell-grams.”

These dreaded documents are the written follow-up questions from Representative Dingell, and they may be a dozen or more pages long. (Other committees also send such follow-ups, but Dingell’s are legendary.) Congressman Dingell’s favorite target is the Environmental Protection Agency, with the Food and Drug Administration next, and DOD third. It was the National Highway Transportation Safety Administration, however, which received the most recent big-time Dingell-gram, a 17-pager delivered in September 1991. There were more than 100 questions in the letter, all of which Congressman Dingell wanted answered within 45 days. That may sound like plenty of time, but it is not much when you consider all the coordination required of responses to questions from a congressional committee.

- *Oversight hearings.* These are similar to investigative hearings, except that the hearing has not necessarily been triggered by allegations of malfeasance or wrongdoing. Oversight hearings are the legislators’ way of keeping up with how the executive branch is implementing the laws Congress has passed.

Many laws do not lay out in great detail just how the provisions in the statute are to be imposed on the public. That is often done through regulations. Congress wants to see whether these regulations actually implement the “congressional intent” associated with that particular piece of legislation. If the regulations seem to be in conflict with what the legislators had in mind, then an oversight hearing may be an opportunity for Congress to discuss its intent with the relevant federal department or agency and perhaps to suggest changes in the regulations.

If the agency decides that it does not want to change the regulation—which is usually a pretty stupid position to take—then Congress might just make the law more specific or write something into the report language accompanying the next authorization or appropriation bill for that agency. Oversight hearings are not necessarily as confrontational as investigative hearings, but they may be. Oversight is generally not an occasion for a committee to bring in someone from the executive branch and just tell them what a good job they are doing in implementing a program. They are quite common, for example, when questions come up about a weapon system’s performance, cost, or development schedule.

- *Confirmation hearings.* This is the type of hearing you are least likely to encounter. Despite such exceptions as the Clarence Thomas and Robert Gates confirmation hearings, most such affairs are fairly routine. Congress holds literally scores of them every year for positions from ambassador to department heads. If you are ever involved in a hearing for a

*“I’d rather have a root canal
without anesthesia . . .”*

controversial nominee, you will get plenty of help, because by definition a confirmation hearing is triggered by a presidential nomination.

Once you have determined the type of hearing you face, then you have to determine your audience and analyze how you want to approach that audience. This may seem self-evident: your audience consists of the members of the committee before which you are appearing. This is true to an extent, but it may be that your real audience is only the chairman or the ranking member of the minority party. Or the audience may be a small fraction of the committee or subcommittee, such as a particular member or members having a special interest in the subject under consideration.

You may even know that there is a particular committee staffer who is your real audience. It is not unprecedented for a longtime staffer to be the one who suggested the hearing to the chairman because he or she is really interested in the topic. That person may be a technical expert on the subject and have views that are well-known and quite rigid. You should know this before you prepare your testimony.

In terms of identifying your audience you might even get to the extreme situation where your real targets are not the people within the hearing room. If you think back to the congressional Iran-Contra committee and its hearings in 1987, Oliver North addressed himself only indirectly to the members and staff. He was really aiming at the American people watching on television. This is atypical, and it will not generally be the case unless the hearing involves a high-level witness on a controversial subject or unless the subject is a piece of legislation that the administration wants to get the American people to support or oppose.

It is possible that your hearing will be carried on C-SPAN (the Cable Satellite Public Affairs Network) and perhaps some excerpt from it will be picked up by the networks and broadcast to an even wider audience. Except in the case of closed hearings, members of the press are likely to be there. If your topic is controversial or timely you might get *The New York Times* or *The Washington Post*. You are more likely to see reporters from *Army Times* or *Air Force Times* or *Navy Times* or from specialized publications like *Inside the Pentagon* or *Defense Electronics*. I can assure you that if there is anything interesting in the offing, the press will want to know about it.

After you have figured out what kind of hearing it will be, whether it will be closed or open, and who the audience is, you are ready to go on to the next step, which is to determine what the committee wants you to cover in your prepared testimony and what you should be prepared to respond to in the way of questions from the members.

On rare occasions you will receive a nicely prepared set of questions; on even rarer occasions, the committee members will stick to those questions. But do not ever count on this happening. Call the point of contact on the committee staff and ask that person just what the committee hopes to get out of the hearing. The more information you get, the better you can prepare. As one former Air Force liaison officer told me, "We always found it useful to suggest some subject areas or questions which could help both the committee and the witness look smart. If we could not get the committee staff to include these in the briefing books, we would sometimes go to a friendly personal staffer and thereby get the questions to a member." It may not always work, but this technique is certainly worth a try.

Once you have these preliminaries out of the way—and know just how much time you have to prepare the witness statement—then you are ready to begin your work.

The first thing you will want to do is to see what your organization said about the subject the last time someone testified on the Hill. I assure you that the committee staff members will have dug out that testimony, and they will be watching carefully to see whether you are consistent with or whether you are contradicting something your agency said before.

Even as you are preparing your testimony, the committee staff is also working to prepare for the hearing. Depending upon the type of hearing, the staff will be preparing briefing books for the committee members and questions for them to ask during the course of the hearing. The staff members will have researched the issue just as you have and will highlight for the committee members any problems or issues that ought to be addressed in the course of the hearing. Committee staffers are also present during the hearing and will be taking notes and slipping questions to the committee members.

One thing you do not *ever* want to do is insult a staffer. You probably know not to insult a committee member, but insulting a staffer may get you in just about as much hot water. I recall one Army colonel who challenged the budget chief of the Senate Intelligence Committee on how much the colonel's organizational budget was for the year. The officer did everything but call the staffer stupid, when in reality both men were right in what they were saying. The colonel was talking about how much he received to execute his mission; the staffer was talking about how much it cost to execute the mission *and* to pay the colonel's troops for the year. It did not make the staffer happy to have

his figures challenged by someone who obviously did not understand what they meant. It is wise to note that staffers never forget, and that committee staff tends to remain for the duration.

As you research and write what you or your boss is going to say, it might be helpful to consider some keys to good testimony:

- *Be logical, clear, and to the point, and directly address the questions you have identified as being at the heart of the hearing.* Among the best testimony I have ever heard was that at a hearing on the Defense Intelligence Agency budget. The witness was Lieutenant General Leonard Perroots, who came quickly to the point with something like: "We have asked you gentlemen to authorize the Defense Intelligence Agency to spend \$x billion during the next fiscal year. . . . This is what you got for your money last year. . . . This is what we plan to give you for your money next year. . . . These are the priorities I have for DIA." When he finished his prepared testimony, almost everyone in the room understood what DIA was all about.

Tell the committee in your opening what your thesis is, support that thesis in the body of the statement, then close by summarizing what you have said. Members and staff are constantly moving in and out of the hearing room, and this gives them more than one chance to get your main points.

What is the antithesis of clear and effective testimony? How about the following, which was actually spoken before the Senate Select Committee on Intelligence:

Mr. Chairman, I feel very strongly that these decisions by the agencies should be made in a manner that takes into consideration the sensitivities and exposures associated with the decision, and that when efforts are initiated after the programs have begun to get the type of approval which you sought, which is quite appropriate, the inappropriateness is applicable to when it is initiated.

Or how about a shorter one: "That gave us a bottom line of about four thousand missiles, minus five hundred plus a thousand, in round numbers."

- *Do not use jargon or acronyms.* We live in a world of acronyms. There is scarcely a program that does not have half a dozen acronyms associated with it. Those of us on the inside use these acronyms as shorthand, and we also use them to show other insiders that we, too, are part of the team. Do not use them. I repeat: DO NOT USE THEM. No matter how common you think an acronym is, there will be members of the committee and the committee staff who will not know what it means, and that diminishes the effect of your testimony. About the only one you can use with safety is "DOD," and go easy on that. Present the testimony as if you were writing for an educated newspaper audience. Think of yourself as a writer for *Time* or *Newsweek* or *The Washington Post*. You needn't drop down to the level of the *National Enquirer*, but never assume—never!—that everyone is at the same level of expertise that you are.

How about the following example from an Intelligence Committee hearing: “Over the years we have frequently been called upon to clarify the relationship between the PRD-10, TPDF, MRDFS, and our TPCS thing that I talked about earlier.”

- *Do not use wiring diagrams.* I have never heard anyone—members or staff—express a desire to see organization charts at a hearing, yet DOD witnesses in particular seem to have a compulsion to use them and show them. Very few people in Congress really care who reports to whom in an executive branch organization. What the people on the Hill want to know is whether it works. If not, can it be fixed? Or how much will it cost? Or why does it cost that much? Or can you do it with less money? Or why should we continue to fund this program? Or what are the taxpayers getting for their money? I recall one general officer whose testimony began with wiring diagram after wiring diagram. The chairman asked him not to show any more of them, because he wanted to get to the meat of the presentation. The general said, “Yes, Mr. Chairman, but I have just one more diagram I want to show you.”

- *Be truthful.* It is really awful that this even has to be mentioned. It ought to be something that we can all take for granted, but unfortunately that is not the case. The most obvious examples of untruthful testimony in recent years came out of the Iran-Contra affair. There have been numerous indictments arising from the giving of false testimony to Congress. It is a felony, a violation of the US Code, to give untruthful testimony to Congress, whether you are under oath or not. Both Oliver North and John Poindexter were convicted of giving false testimony to Congress, though both of their convictions have been reversed on what I would call technicalities. Alan Fiers of the CIA and Elliott Abrams of the State Department have pled guilty to giving false testimony or information to Congress. And Claire George and Dewey Clarridge of the CIA have been indicted for such.

Oliver North, testifying in the Poindexter trial, admitted that he had lied to Congress, and he tried to make the case that there were extenuating circumstances:

Prosecutor: “You thought you could go in front of those twelve Congressmen, sit there, and lie and lie and lie?”

North: “I was not under oath. I have never lied under oath. It was an informal, off-the-record meeting.”

Sometimes you are sworn and sometimes you are not, but whether you are under oath does not matter one bit. A military officer or a high-level civilian in our government should be expected to tell the truth, regardless of whether he has sworn an oath and completely apart from the legalities.

- *Do not use jokes.* This injunction should be violated only with the greatest of caution and only if you have Bob Hope’s joke writers and George

Burns's sense of timing and delivery. Committee hearings are not speeches before the Rotary Club, and even if you or your boss likes jokes, this is not the place for them. Many an otherwise fine presentation has died because of a joke that did the same.

- *Conform to time limits.* You will probably be told by committee staff or in the letter of invitation just how long you have to present the testimony. *Do not exceed that limit.* If you simply cannot present everything within the time given you, you may have to prepare two versions of the testimony: one to be delivered, the other "for the record." This latter can be as long as you want it to be, and it will be studied by members and staff who are interested in the subject.

At the same time, even if the prepared testimony is within the time limit, the witness may be asked to summarize the testimony, particularly if he is one of several witnesses to appear before the committee that day. The witness should be familiar enough with the testimony to be able to do that on a moment's notice. Witnesses are generally allowed to place their full testimony in the record if they are asked to summarize it.

- *Accurately represent the administration position.* This also should go without saying. Yet it has happened on occasion that someone has testified before a congressional committee and then had his testimony disavowed by the administration. This does not lead to long tenure for either the person who presented the testimony or the person who prepared it. Testimony is generally cleared at many levels, ending with a final clearance from the Office of Management and Budget, which is part of the Executive Office of the President. You should determine who the clearance authorities are for your testimony, and how much time the clearance process will require, at the time you determine how long you have to prepare the testimony. Whatever time you allow for clearance, it will probably take longer than that.

If you have any doubt about the accuracy of your proposed answer or whether it represents the administration position on an issue, you can always request to supply the answer later "for the record." There are commonly many such requests at any hearing, and they are generally granted unless the hearing has turned acrimonious. If you do make such a request, of course, you must promptly supply the answer or the data.

- *Take into consideration what other witnesses will tell the committee on the subject.* You may be one of several witnesses who will testify on a particular subject. You may even be part of a panel. When you call the committee point of contact, ask him who the other witnesses will be and whether you or your boss will be testifying alone. He will probably tell you. Then contact your counterparts who are preparing the testimony for those witnesses, if they are executive branch members, and ask them what they are planning to say. It helps your credibility and theirs if two or more executive branch witnesses are not saying contradictory things. The process is a bit

trickier if the other witnesses are not from the executive branch, but you might still make a careful approach to them. They, of course, may ask what you are planning to say, and that request may put you on the spot if you are unable to comply. Be careful when discussing anything about possible testimony with individuals outside your own shop, and especially with individuals outside the executive branch. On the other hand, you may be able to discuss your testimony with a friendly committee staffer and gain some insights as to how it is likely to be received by the committee. As one veteran of the Hill Wars suggested, you might even try inviting one or more staffers over to your place of business in advance of the testimony. That way, they can get to know you, and you might have the opportunity to give them a firsthand look at a system or a problem area. If you are doing your job correctly, you have already taken key staffers on trips to field sites and equipment demonstrations long before a hearing has been scheduled.

- *Make sure the person delivering the testimony has mastered it.* No matter how much confidence he has in the person who prepared the testimony, the witness is the one on the spot. The person making the presentation needs to go over the testimony and make it his.

- *If you use charts and diagrams, make sure they are clear and can be reproduced in black and white.* I cautioned about wiring diagrams, and in general these should be avoided. But sometimes a judiciously used chart, particularly in budgetary matters, can make a point quite well. In preparing such, remember that these charts will be reproduced in black and white in the printed version of the testimony, and they need to be reproducible. If you use color in your presentation charts, be sure that you have reproducible versions to submit for the record.

- *Present the testimony in the number of copies requested by the committee.* Committees usually ask for 50 or even 100 copies of testimony, and they would like to receive it 48 hours before the hearing. Try to comply. It will make the committee staff feel much better toward you. After you have completed testifying, you might want to leave copies of your testimony and any visual aids with the service congressional liaison office. Its staff can then respond to requests from members or staffers who do not serve on the committee that held the hearing.

Testifying before Congress may never be a pleasant task for most military officers, but if approached in the right way, it need not be a disaster, either. Just as with any military operation, the key is to know whom and what you are facing and to prepare appropriately. Congress is very much like a foreign land, with a different language and customs, and congressional committee hearing rooms will be the scene of many DOD battles in the years ahead. The prudent officer will prepare himself for the action at hand. □