



Congressional Oversight Training Series (COTS) – March 2008

Dos and Don'ts of an Oversight Hearing

Do:

Remember that oversight is Congress' constitutional responsibility. It's also Congress' obligation. Congress should be *checking* on executive institutions to keep the government *balanced*.

Plan

Know when to raise the Fire Alarm and when to use Police Patrolling. There will be occasions for both. The fire alarm hearing is used to conduct an investigation when new information suddenly comes to light. Police patrolling—regular oversight of agency operations, etc.—is also key for comprehensive congressional oversight.

Scope hearings effectively. Because Members, other than your boss, are prepared by their own staff and will typically question the witnesses, hearings tend to be “blunt,” i.e., imprecise, instruments. They tend to be most effective when focused on relatively narrow issues.

Consider using a “theme team” approach. One way to conduct hearings with more precision than is usually possible is to coordinate the questioning, by theme, among several Members of your Committee. While this may require greater preparation than normal it can be very effective, especially for high-profile investigative hearings that resist being scoped narrowly.

Sell the proposed investigation to your Member. There is no hearing if your boss isn't excited too—get them outraged! You are the filter, and you know why this issue is important; highlight the important issues for the hearing in a way that will be salient to the masses. Popularize the issue and SELL IT.

Leverage your investigation by getting others involved. Enlisting the assistance of other government organizations, including Inspectors General (IGs), the Government Accountability Office (GAO), and the Congressional Research Service (CRS), and outside public interest groups such as taxpayer advocacy groups, human rights organizations, government oversight organizations, can be helpful in developing and supporting possible remedial legislation resulting from your investigations.

Use the subpoena, but only as a last resort. Look for alternative and new ways to get information. Hopefully all of your sources will cooperate with your investigation, but if not, the subpoena is there as a last resort. Be sure to exhaust all of your other resources first, though, because otherwise the Committee chairman doesn't want to hear about it.

Know the Rules

Check your Committee's rules on conducting the kind of oversight you intend to pursue. After developing your oversight agenda for the year, consider whether your Committee's procedural rules are sufficient to obtain the kind of information it will need to discharge its oversight responsibilities. For example, consider with your boss whether your Committee should amend its rules to provide for deposition authority or counsel questioning during hearings, or if the rules on authorizing subpoenas provide the Committee with the flexibility and agility it needs to further its oversight agenda. Amending your Committee's rules in this regard is most appropriately done at the first business meeting your Committee convenes at the start of every Congress, rather than during an investigation, lest you open your Committee to the charge that it is unfairly changing the rules in the middle of the game.

Be mindful of potential procedural objections regarding how you conduct your investigations.

Not properly thinking through such issues as how you interview/depose witnesses or how you compel the production of documents/testimony may compromise your ability to enforce your Committee's entitlement to documents/testimony or complicate the Justice Department's ability to prosecute cases against offending witnesses (for congressional contempt, lying to Congress, obstructing congressional investigations, etc.). Typical procedural issues that come up in the course of an investigation include those relating to the jurisdiction or scope of the investigation; the sufficiency of notice provided to Members for voting on subpoenas and conducting other business related to the investigation; and adherence to quorum requirements on votes related to the investigation. Especially in high-profile investigations, counsel representing witnesses before your Committee will likely look closely at whether the Committee is conducting its investigation in accordance with its own and the Congress' standing rules when considering available objections. Not looking closely at those rules yourself could seriously hamper your investigation.

As questions come up, consult with House or Senate Legal Counsel. Counsel are an excellent resource and will likely be called upon to vindicate the body's interests in any formal proceedings should the need arise. They are helpful in perfecting the Committee's entitlement to the production of documents/testimony; and representing Members or staff in formal judicial proceedings on matters arising from the investigation (such as conducting interviews in connection with criminal prosecutions for lying to Congress, any proceedings where "speech and debate" immunity or privilege needs to be asserted, etc.).

Investigate

See if it's a systemic problem. While your office may not know, GAO, CRS, CBO, IG offices, and others probably do. Call them to see if they have any existing reports that address your concerns (it may be hidden in a report with a seemingly unrelated title) and if they don't know, commission a report. Be sure to also check into older pieces of legislation that were supposed to have "solved" this or similar problems.

Get out of the office. Often whistleblowers will not be able to meet you in your office—you're going to have to go to *them* if you want to get the crucial information for the hearing. And although the internet is a fabulous tool, sometimes you will have to get out of the office to get those hard-to-find interviews or documents.

Find the example. As you research, research, research, keep an eye out for the example that will put a human face on the problem or otherwise make it tangible. Find the Department of Defense's \$640

Project On Government Oversight
666 11th Street, NW, Suite 900, Washington, DC, 20001 www.pogo.org

toilet seat or the \$68,000 worth of dog booties purchased in response to Hurricane Katrina—these are the details that gather interest and make your hearing memorable.

Cultivate contacts among the civil service within the agency or agencies you cover. Many times, they may reliably provide you information that you simply will not be able to get from formal channels.

Research, research, and research. Make sure your Member knows the issue’s significant background information. Check with government agencies, OMB, GAO, IGs, knowledgeable public interest groups, academics, whistleblowers, members of the press who are on the relevant beat or have background in the issue, the internet, and anyone else who might have useful information.

Use the Press! The press can be a great resource for additional information, and may be able to guide you to sources that can help frame the issue as a systemic problem. Sharing information and leads with the press over the extended period of time—especially if you develop a constant relationship with a particular reporter—can also create more interest for when the hearing happens. Moreover, change is unlikely unless you publicly “shame” the troubled agency or department. Why should the agency fix the problem if nobody knows or seems to care about it? But, understand the distinction of providing information “on the record,” “off the record,” “on background,” and “on deep background.” Each term can mean very different things to different journalists. Make sure that you and the reporter share a common understanding from the very beginning, so you can manage your expectations as to what will appear in print and how it will be sourced.

Consider legislative solutions before or after the hearing. While the goal of the investigative oversight hearing is to learn about the nature of the beast, one goal of Congress is to figure out the proper way to reform the government for the better—to put the beast on a leash or fence it in, so to speak. While the problem may be the initial focus, the ultimate outcome should be a solution.

Design and Prepare Hearings

Think carefully about timing. Avoid putting the hearing near holidays or planned major news events—you’re not going to knock the State of the Union off the front page. Although the issue may seem urgent, it is often better to wait several weeks—or even months—to hold the hearing. With more time, the GAO may be able to put together a letter, testimony, or (with many months) a report to ground your concerns while you gather more information.

Pick your witnesses carefully. Line-up witnesses who can provide the big picture (when you need to educate the committee about the issue)—GAO, agency heads, and other higher-ups—and the players who can focus on the specific problem—the whistleblower, experts, and others more directly involved.

Organize panels for maximum impact. Consider the advantages and disadvantages of beginning the hearing with the government and corporate officials versus kicking it off with a whistleblower or someone else who will put a human face on the problem. In most cases you want to put the most newsworthy witnesses at the beginning, and force the second panel of government and corporate officials to respond to the first panel’s allegations. If you lead with the government and corporate officials, be sure to have them stay to respond to the second panel.

Take good care of your sources. While whistleblowers may have the best information and may be able to give the most sensational testimony, their presence may focus the attention of the hearing away

from the systemic problem in favor of criticizing the whistleblower. If the whistleblowers are anonymous, keep them anonymous; there are little protections for them and they may risk retaliation for sitting on a panel or otherwise publicly criticizing an agency or department. An anonymous whistleblower's primary purpose is to guide you to documents and information. Even if they are going to "go public" at the hearing, in some cases it may be best to keep the whistleblower a mystery up until the day of the hearing.

Pre-interview witnesses. It will enable you to shape questions to get the most information out of your witnesses, *including government and corporate officials*, during the hearing. Pre-interviewing also prevents unexpected responses that might blindside the Senator or Representative; with a pre-interview you can have a response ready to (almost) every answer or surprise.

Practice the hearing. Government and corporate officials usually prepare to give testimony before their own "murder board" with a lobbyist or congressional liaison. You should be similarly rehearsed and prepared.

Craft the opening statement carefully. Your Member's opening statement should address the major issues and concerns about to be revealed by the witness's testimony. You should also be prepared to write opening statements for other members of the committee. It should be a roadmap that provides the complete picture or story that you and your Member want taken away from the hearing.

Script the questions. And anticipate the answers. While there will undoubtedly be some surprises in the hearing, you should be able to anticipate most of the testimony and be able to design questions that will get directly to what is at issue. Include after each question the expected testimony/answers. If you anticipate that a witness will be difficult, include enough facts to allow your Member to engage the difficult witness, whether it be to draw out specific facts, undermine their credibility, or for some other goal you and your Member deem important.

Predict adversarial witnesses. You're going to have them. Know your stuff and plan responses to the witness's testimony. Enable the Member to give a confident response and move on—do not allow the adversarial witness to sidetrack the hearing.

Insist on a clear record when questioning witnesses. All too often, witnesses (particularly purposefully evasive ones) will want to answer the question that they would like for you to have asked and not what you (or your Member) actually asked. The key to effectively questioning witnesses (at hearings, depositions, or interviews) is listening—and listening carefully. Beware of the so-called *Bronson* answers, that is, answers that, while true, are actually non-responsive. Only by listening carefully will you be able to ferret out these sorts of answers, which tend to clutter the record and can give rise to an affirmative defense to a perjury or misleading Congress charge against a witness who is being purposefully evasive.

Follow Through

Conduct post-hearing oversight. Conduct interviews with prepared questions after the hearing. Like your tennis serve, an effective oversight hearing requires a good follow-through. Good oversight does not end after the hearing.

Stay in touch with the players. Follow up with the witnesses to see if the problem is still occurring. The proposed solutions may not be working or they may not be implemented at all. It may take more than one hearing to solve the problem—keep up with it to see if an encore is necessary.

Keep track of agency promises. We're all familiar with the ability to talk the talk without being able to walk the walk. Make sure that the agency is taking the proper steps, and not just standing their ground in the troubled status quo. If the agency is standing still, it may be time for another legislative solution—or another hearing.

Don't:

Politicize the hearing. The goal is not to simply bash the other side of the aisle. If the hearing is obviously politically motivated, the media and the public will not pay attention.

Be afraid to pick up the phone. Google is a great thing, but an actual employee can give you a better idea of what information is available, and much more quickly. A GAO employee may be able to direct you to a report that you would have missed. Also, IGs and GAO employees frequently have valuable information that might not have made it into the final version of the report—ask them about it!

Rush it. Wait until you have enough information for a hearing so that the committee can examine the issue in a comprehensive way. The goal of an oversight hearing is to discover information; a hurried hearing may result in too many questions that could have easily been answered beforehand if more time and effort was put into the preparation.

Book it in the afternoon. And especially not on a Friday. By the afternoon, most press deadlines have passed. On Friday, the hearing risks getting bumped off the news broadcast in lieu of another celebrity adoption. A congressional oversight hearing is newsworthy business—let it get the copy it deserves.

Wait until the day of the hearing to get the news out. A press release the day of the hearing should not be your first contact with the media. Give reporters enough time and information to do reporting *before* the hearing. Also consider running a story the day of the hearing to add energy—headlines work like a double shot of espresso.