

In the Hot Seat: Tips for Corporate Executives Testifying Before Congress

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By Justin Shur and Eric Nitz

It is an all too familiar scene: A CEO front and center in a crowded Capitol Hill hearing room, surrounded by press photographers and television cameras, facing sharp questions by members of Congress. And, in the coming years, we are likely to see more of it. A wide range of issues involving private sector entities are at the forefront of public attention. Those issues are drawing bipartisan interest and are likely to be the subject of future congressional hearings.

The last few months alone have seen several such hearings. A few weeks ago, the House Financial Services Committee held a hearing on the GameStop stock controversy that recently shook the markets. Hedge fund CEOs faced questions about whether they benefited from the trading frenzy at the expense of individual investors. And, more recently, the leaders of Google, Facebook, and Twitter testified before the House Energy and Commerce Committee, answering questions about the role of their social media platforms in spreading disinformation.

Through genuine discussion and debate of important topics,



congressional hearings play an essential role in legislative policymaking. But too often, unfortunately, highly-publicized hearings turn into a spectacle, with committee members seeking to vilify or embarrass corporate executives to play to the crowd and score political points. As a result, testifying before Congress can present unique legal, political, and public relations challenges with significant risks. A poor performance can be devastating to a company's business, its public image, and the credibility of its top executives. It can even trigger or fuel private lawsuits, not to mention civil and criminal

investigations by enforcement authorities.

Careful and thorough preparation is crucial. It can make the difference between a C-suite executive that successfully navigates a congressional hearing and one that becomes a cautionary tale. While each situation is unique and requires a tailored approach, we explore here a few tips using observations and takeaways from recent testimony.

Stay on Message

When managing a crisis—and make no mistake, a high-profile hearing before a congressional committee *is* a crisis—staying on

message is key. You need to know exactly what message you want the media and the public to take away from your testimony. And then you need to be prepared to consistently and repeatedly deliver it.

This can be challenging in the context of a congressional hearing. For one thing, you will constantly be interrupted. The committee members receive only a few minutes each to ask questions. If they do not like what you have to say or how long it takes you to say it, they will not hesitate to cut you off. To effectively communicate your message, it must be clear and concise.

Moreover, you are unlikely to be asked “softball” questions that allow you to lead with your key message. And, depending on a given member’s motivations or agenda, you may receive questions that are completely off-topic or that offer you no satisfying answer. But no matter what you are asked, there are techniques to help you guide the conversation back to your key message.

Consider, for example, hedge fund CEO Gabriel Plotkin’s testimony during the recent Game-Stop hearing:

Committee Member: *Large investors, including hedge funds like yours, have to disclose their long positions when they own 5% or more of the company’s shares, but no such disclosure is required for short positions. Is this type of disclosure for short positions something you will support?*

Plotkin: *Congresswoman, thank you very much for the question. I think it’s a really good question. Whatever regulation*

is put forth in the marketplace, we will obviously operate within those rules.

Notice that Plotkin briefly acknowledges the question and then pivots to his key message: His fund has followed and will continue to follow the laws and regulations that govern the shorting of stock.

Mark Zuckerberg employed the same strategy when asked if Facebook bears some responsibility for the recent attack on the Capitol, which was fueled, in part, by disinformation spread on social media. Keying off the question, he noted that Facebook has a “responsibility.” But he then pivoted to explain that Facebook’s responsibility is to make sure the company takes reasonable steps—which it has—to keep hate and violence off their platform.

These techniques allow you to overcome the challenging environment of a congressional hearing and effectively deliver your key message to frame the debate in a way that reflects positively on you and your organization.

Reject False Choices

A common tactic used by committee members is to ask forced-choice questions. Members, for example, will demand that witnesses answer the question with a “simple yes or no.” Members adopt this technique to maximize the number of questions they can ask within the short time they are allotted and to induce the witness to concede particular facts or validate a certain perspective.

Forced-choice questions often present a false dichotomy as many questions cannot be

answered with a mere “yes” or “no.” Moreover, such questions—whether intentional or not—frequently presuppose certain facts which may be unproven or even untrue. By giving a simple “yes” or “no” answer, you may inadvertently accept those suppositions—which could damage your reputation and credibility or create liability for you and your organization.

There are several strategies you can employ to avoid that risk. You can challenge or correct the premise of the question, as Twitter CEO Jack Dorsey recently did. A committee member suggested that Twitter has a long history of not cooperating with law enforcement and asked whether the company would commit—“yes or no”—to future cooperation with law enforcement. Dorsey answered by explaining that the premise of the question is untrue, saying that Twitter, in fact, has a strong partnership with law enforcement and that it has worked and will continue to work regularly with law enforcement.

Another strategy is to explain that the question cannot be answered with a “simple yes or no” and then offer the relevant context or nuance. For example, Citadel CEO Ken Griffin was asked at a recent hearing if his fund intentionally traded securities in front of other investors. And was presented with only two possible answers: “yes” or “no.” Griffin gave neither. Instead, he noted it was a complex question and offered to provide the appropriately-detailed response.

Members may push back and demand a yes or no answer. Stick

to your guns. Be assertive and firm—but respectful—in explaining that the question cannot be truthfully answered in the manner requested.

Stay in Your Lane

In a courtroom, witnesses cannot speculate or guess. That is because, under the rules of evidence, the testimony of a fact witness (i.e., a non-expert) is limited to her personal knowledge of events. But the rules of evidence do not apply to congressional hearings. As a consequence, members will routinely invite witnesses to speculate or offer their opinion on matters outside their personal knowledge or expertise.

It is often best not to do so. If the question concerns an area that you are not familiar with, you may provide incorrect information or be proven wrong. Your personal opinion may end up conflicting with your organization's policy or position. Or you may end up inadvertently wading into a controversial or highly-politicized public debate. Any of these missteps can quickly become the focus of your testimony and distract from the key message you are seeking to convey.

You can avoid that risk by staying in your lane. Take, for example, the testimony of Melvin Capital's CEO at the GameStop hearing. He was presumably called to testify because Melvin Capital held a large position in the company's stock. But, during the hearing, the CEO fielded questions going well beyond the firm's trading. He

was asked, for example, whether additional securities regulations were needed. In response, he explained that it was not for him to decide—as he is not a legislator or regulator.

Similarly, when asked whether there was inequality within the American financial system, that same CEO deftly explained that the question raised broader societal issues that were not within his area of expertise. By not speculating or offering his personal opinion, he avoided what could have otherwise been a situation fraught with risk for him and his firm.

Don't Take the Bait

At their core, high-profile congressional hearings are political theater. Members, for example, may forego asking questions in favor of giving fiery speeches aimed at constituents and the TV cameras.

In the lead-up to questions for the hedge fund CEOs, one member theatrically proclaimed that: "The stock market is simply a casino for the rich ... And when you all screw up, the people end up paying the tab through losses or bailouts." Another committee member accused the tech company CEOs of "amplifying discord" on social media in order to "boost their bottom line." What should you do when something like that happens? Nothing.

As these CEOs did, you should just sit there, stone-faced. Don't speak. Don't react. Such grandstanding is typically for the

benefit of the members' constituents and the media. The members will try to provoke an emotional response from a witness in an effort to create a memorable sound bite. Don't take the bait.

Nothing good comes from a confrontational or condescending approach. Far too often, a visibly frustrated witness or a testy exchange becomes fodder for a viral video, in which a corporate executive and his company are negatively portrayed. That type of adverse publicity can have long lasting effects and will undoubtedly distract from your key message.

Thus, it is important to keep calm in that moment. Always remember that you are "on stage" and being judged on not just what you say, but how you react to what others say. Maintaining controlled verbal and body language is essential. This will allow you to communicate with confidence, maintain credibility, and focus on your key message, even in the face of a hostile and argumentative committee member.

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These tips are just the starting point. A successful appearance before Congress is the result of hours of preparation. By understanding the process and preparing, corporate executives can advance their organizations' goals, protect their brand, and minimize any legal and reputational fallout.

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