

Focus On

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What a Government Lawyer Needs to Know and Do When Communicating with Congress

YOU ARE CHARGED with making your agency's case to Congress on a vital issue. You are scheduled to brief a group of House members or senators on an important departmental issue. You are trying to figure out the best way to respond to a

congressional inquiry on a sensitive matter. You have been asked to assist in preparing your boss to testify before a congressional committee. You are receiving endless calls from several congressional staff members asking for information or assistance with developing a legislative measure or reviewing a current regulation. You are called on by a congressional office to explain or defend the programs, expenditures, actions, or policies of your organization, perhaps discreetly, perhaps in an oversight hearing.

Sound familiar? Many lawyers throughout government are faced with these situations every day. What these engagements have in common, of course, is that they are all about communicating with Congress as well as the need to communicate effectively. As lawyers, we all develop our own methodologies for research and action, and we have the benefit of departmental and agency protocols and support. But for those times when you find yourself facing interaction with Capitol Hill, it might be helpful for you, as a government lawyer, to consider some tried and true principles that underpin effective congressional relations and communications and that also reflect the unique culture of the nation's legislative branch of government.

Consider Context and the Agency's Role

Remember that you are engaging in cross-branch communications. Your first loyalty and duty are to your department or agency, both in protecting its rights and positions in the executive branch and in advancing and advocating its interests in the halls of Congress. Basic constitutional principles, case law on the separation of powers doctrine, and the policies and practices of the Office of Management and Budget and your agency will generally guide you in this area. Respect the separation of powers going the other way as well. Be deferential and cooperative as much as possible with Congress, and remember that part of your role is to help the legislative branch understand your agency's issues and positions.

Engage Your Congressional Relations Office

Congressional relations offices and legislative affairs personnel in departments and agencies serve important roles. They are excellent resources for information, background, access, and strategies. As professionals who deal directly with Congress every day, they can help advise and guide you and also help you avoid pitfalls. It is quite likely that your agency may require you (and anyone in the agency for that matter) to inform the congressional relations office about any contacts or plans involving Congress. Acting as a "lone wolf" in dealing with Congress can be a slippery slope. Remember that it is important for an agency to speak with one voice, and any communications with Congress are also deemed to be emanating from the executive branch generally. So clearances and check-offs with agency higher-ups, the Office of Management and Budget, and perhaps even the White House are also advisable. Work with and through your colleagues who are responsible for congressional relations.

Work with Congressional Staff

Regardless of the type of inquiry, activity, or issue, it is usually helpful and important to work directly with the congressional staff member from the office or committee involved. That staffer can provide context and helpful background information as well as guidance on complying with any request. A good staff contact or committee liaison can be a very valuable asset. The goal is to develop a line of two-way communication as well as a relationship of trust. You will have someone to consult when you need information, and you have the opportunity, in return, to make yourself a reliable and credible resource for that staffer on behalf your client, the agency.

Nail the Question, Request, or Issue

Identify and understand the core question or issue up front before making any response or taking any action. Conduct adequate research as well as issue, political, and stakeholder analyses so that you can get your arms around the issue. Drilling down on an issue, its political support and opposition, and the roster of those who care about it are all important activities that should be undertaken before communicating with the Hill. Master the issue to ensure an adequate knowledge base, credibility, and expert status. Have all the facts in hand before going to the Hill with a response.

Be Responsive

Whatever the issue or activity, Congress expects an agency to be responsive in the form of an answer or action. Candid and thorough responses from agencies are prized possessions on Capitol Hill. Short of giving away the store or violating executive privilege, attempt to provide as much helpful information to Congress as possible. Provide thorough, yet succinct, candid, and helpful information that is timely, accurate, useful, and reliable. And, make sure there are no surprises. Congress hates surprises!

Be an Expert

Remember that you are, and are considered by Congress to be, the expert on any issue involving your agency. Congress expects you to educate and inform, to report, and to help members understand issues so they can carry out their duties. As an agency lawyer, you have the opportunity to educate Congress and advocate your agency's positions. Prepare to respond and act accordingly.

Target Your Written Communications

When responding in writing to a congressional request or inquiry, write for the Hill, not for yourself or your agency. In other words, know and target your audience. Make your writing style user-friendly, understandable (not in "government-speak"), succinct, informative, and compelling. Perfect the famous "congressional one-pager," known also as an executive summary. If you cannot deliver your basic message in one page, start over. Offer to provide White Papers and other materials for background and files.

Make Written Communications Compelling

To make issue summaries, written testimony, and presentations for Congress more compelling, enumerate highlights; provide brief supporting data for each major point; use examples, vignettes, and best/worst case scenarios; and project outcomes, results, and consequences. Draw conclusions but provide factual support for them; offer remedies and solutions; suggest changes; use action verbs; and be positive in tone. Frame the issue and your message to advance the agency's best interests as well as to inform the Congress with clarity.

Sharpen Oral Presentations

When testifying before a committee or making an oral presentation of any type to Congress, use and stick to a prepared script from which you speak, but do not read to your audience. Adequate rehearsals and practice can help you perfect this skill. Nail the major points early in your remarks; exude confidence in your presentation and command of your subject; and use graphics, gestures, voice inflection, and good eye contact to communicate effectively with your audience.

Prepare Adequately for Congressional Hearings

The single greatest pitfall for many congressional hearing witnesses is the failure to prepare properly. Ensure that your agency witness is well-prepared and rehearsed enough to execute his or her three major responsibilities for any hearing: submission of a well-crafted written statement in advance of the hearing, presentation of high-quality oral testimony on the day of the hearing, and response to committee questions.

Remember Your Lawyerly Oath

Zealously represent your agency, but also jealously guard your reputation for honesty, integrity, and legal and ethical behavior. Comply with the letter and spirit of the law and avoid the substance and appearance of any wrongdoing or impropriety. Carefully follow committee, House, and Senate rules of procedure. Rise above political and partisan issues and steer clear of engaging with members of Congress in those areas.

Consider Practical Suggestions for Interacting with Congress and Building Good Working Relationships

- Be respectful, but be a peer.
- Be resourceful and cooperative.
- Be helpful and use the two-way street of communication.
- Be friendly and approachable—avoid pretenses or exaggeration.
- Provide accurate, timely, reliable, and usable information.
- Respond in double time to requests and calls.
- Play to constituent interests whenever possible.
- Be a forceful, consistent advocate.
- Be "extended" staff by offering a work product.
- Make appointments well in advance and prepare for meetings adequately.
- Follow up in a timely manner and be sure to say "thank you."
- Be flexible and as responsive as possible. **TFL**

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