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Senate Committee Hearings: Arranging Witnesses

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Selecting witnesses is one of the most important aspects of planning a Senate hearing. Committees and subcommittees pay careful attention to which viewpoints will be represented, who should testify, and the order and format for presenting witnesses. A witness must be invited by a committee in order to testify. Standing committees and their subcommittees may also subpoena reluctant witnesses.

Selecting and Inviting Witnesses

To testify, a witness must be invited by a committee. Before officially inviting a witness, committee staff identify and often interview prospective witnesses. Committees consider people from different backgrounds, including individuals from the executive branch, state and local governments, academia, business, and interest groups as well as other private citizens. A committee may invite as many witnesses as it chooses and may schedule multiple days of hearings.

Generally, committees strive to ensure that a range of views are represented, but a committee may decide to invite witnesses expressing only particular points of view or who will speak to specific elements of the hearing's topic. Senate rules allow the minority-party members of a committee (except Appropriations) to call witnesses of their choice on at least one day of hearings if a majority of the minority members make this request to the committee chair before completion of the hearing (Rule XXVI, paragraph 4(d)).¹ This rule is infrequently formally invoked. Typically, the members of a committee from each party work together informally to invite witnesses representing various views. Note that some committees follow additional rules or practices in selecting witnesses.²

Once witnesses are identified, the committee chair usually sends each witness a formal letter of invitation. This letter generally provides the witness with basic information on the proposed hearing, including its purpose, subject, date, time, and location. In addition, the letter might indicate any limitation on the length of a witness's oral testimony.

The committee might also send a witness additional information. This information could include a list of committee members, the committee's rules, a copy of any relevant measure (for legislative hearings), and background information on the issue. The letter of invitation can specify any requirements for the transmission of written testimony to the committee, including explanation of deadlines for its submission. (Under Senate rules, written testimony is to be submitted at least one day before a witness testifies, except before the Appropriations Committee [Rule XXVI, paragraph 4(b)].) A committee may reimburse a witness for certain expenses related to testimony. If reimbursement is expected, the letter of invitation might address this issue.³ Often, the letter indicates a committee staff contact. Committee staff will sometimes communicate or meet with witnesses prior to a hearing to answer questions and to review procedure.

¹ For more details on this "minority witness rule," see CRS Report RS22649, *Senate Committee Hearings: The "Minority Witness Rule"*, by Christopher M. Davis.

² For instance, rules of the Finance Committee direct staff to try "to schedule witnesses so as to attain a balance of views early in the hearings." In addition, the committee explicitly allows every Member of the committee to choose witnesses to testify (Senate Finance Committee Rule 14 (d)).

³ Staff are encouraged to consult with the Senate Committee on Rules and Administration in relation to regulations governing use of committee funds for witness expenses.

Subpoena Power⁴

Most individuals respond favorably to an invitation to testify, believing it to be a valuable opportunity to communicate and publicize their views on a question of public policy. However, if a person declines to appear by invitation, a standing committee or its subcommittees may require a witness to appear by issuing a subpoena (Rule XXVI, paragraph 1). Committees may also subpoena documents. Subpoenas are most common at investigative hearings.

The rules of many committees delineate specific procedures for authorizing a subpoena. Some committees delegate this authority to the chair and ranking minority member (or, in some committees, under limited circumstances, to the chair alone), while other committees require a majority of the committee to either authorize the subpoena or to provide such authority to the chair. Still other committees allow subpoenas to be authorized by either committee leaders or a committee majority or provide for other relevant procedures.

Format and Order of Witness Testimony⁵

Committees determine the format and order of witness testimony. Typically, a witness testifying alone makes a statement and then responds to questions from committee members. Committees may also employ a panel format, often for witnesses with divergent viewpoints. It is normally the practice in this case for all panel members to make statements, then for committee members to pose questions to the panel or to various panelists. Some observers believe this format stimulates debate and elicits more pertinent information. Committees sometimes use other formats for gathering information, such as joint hearings, field hearings, seminars, “roundtable” discussions, and video conferencing with witnesses who are not able to attend the hearing in person.

The order in which witnesses testify is arranged at the discretion of the committee. Protocol dictates that a Member of Congress generally testifies before other witnesses, and a similar privilege is often extended to high-ranking executive branch officials and to former Members and other high-level government officials. Celebrity witnesses may be judiciously placed in the lineup to generate media coverage and public attention to an issue. Testimony from academics, interest group representatives, and other private citizens may be arranged to ensure that committee members hear different perspectives in a particular order—for instance, to allow one individual to respond to arguments made by another.

⁴ For more information on the use of congressional subpoenas, see CRS Report RL30240, *Congressional Oversight Manual*, coordinated by Ben Wilhelm, Todd Garvey, and Christopher M. Davis; CRS Report R45653, *Congressional Subpoenas: Enforcing Executive Branch Compliance*, by Todd Garvey; and CRS Report R44247, *A Survey of House and Senate Committee Rules on Subpoenas*, by Jane A. Hudiburg.

⁵ For more information on witness testimony and associated rules and practices, see CRS Report 98-392, *Senate Committee Hearings: Witness Testimony*, by Valerie Heitshusen.

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