Session Title:
Public Policy 101: Intervening and Testifying in Legislative Settings

Abstract:

This workshop is a continuation of the Public Policy 101 workshops presented at SCRA’s Biennial Conferences since 2005 (Corbett, 2005, 2007, 2009).

This workshop will further the past visions of various SCRA Presidents from 1998 to present that conclude public policy has been neglected and should be a high priority within SCRA. This includes former Presidents Bond, Maton, Solarz, and Toro, such as detailed in their Presidential Columns in *The Community Psychologist*, 31(3); 32(2); 33(1) and 36(4) or in a Presidential Address on the future direction of the field, such as in *The American Journal of Community Psychology* 35(1/2) (p. 3-6). More recently, Elias notes the keen need for attention to public policy and proposes it as a three year priority, as detailed in his Presidential Columns 41(3/4); 42(1); and 42(3). Further, he states that SCRA influence on public policy at multiple levels of government is “...long, long overdue”, *The Community Psychologist* 42(1), p. 2.

The workshop also furthers training in Advocacy and Public Policy, proposed by Scott (2007) as one of the core competencies of CP training and it advances a future vision proposed to promote the professional development and continuing education of SCRA members at all Biennials through Workshops offered throughout the Conference schedule (Corbett, 2008a, 2008b, 2009), as noted in *The Community Psychologist*, 41(2); 41(3/4) and 42(4), respectively.

The workshop content of Public Policy 101 details an action oriented approach to guide participants to participate in the public policy influencing process through the preparation of pre-filed testimony, testifying and defending the testimony position, as well as bolstering that position during the hearing process. This is done by describing a case where the presenter submitted testimony as a disability advocate, testifying to New York State’s non-compliance with the Americans With Disabilities Act (ADA) and U.S. Supreme Court’s Olmstead Decision (Corbett, 2001; 2009). Handouts will include the presenter’s written testimony, a transcript of the cross-examination and additional samples to illustrate different formats, as well as the strengths and weaknesses of each.

The workshop furthers both exposure and proficiency training objectives (Corbett, 2008, 2009) by empowering participants to directly intervene with their state legislatures by submitting testimony in various formats while testifying to and defending an advocacy position or social justice issue of their choice. The workshop has potential value to anyone interested in public policy intervention as an advocate, as well as CP faculty who may wish to gain insight into ways to incorporate the Advocacy and Public Policy core competency within their graduate training programs for all students with an interest in public policy intervention.

This workshop was published in the *Global Journal of Community Psychology Practice*, Vol. 2(3) on February 10, 2012.
Public Policy 101: Intervening and Testifying in Legislative Settings


C. Corbett
Public Policy 101: Intervening and Testifying in Legislative Settings

What is the Outcome Objective of this Workshop?

After this session, attendees will be familiar with the basics of participating in the legislative process. They will have the requisite knowledge and resources to:

- appropriately respond to a legislature’s “Call for Testimony”
- draft testimony in various formats and participate in the hearing process

This pertains primarily to process, form and strategy. This applies regardless of the advocacy issue, position or technical content unique to each situation.
Public Policy 101: Intervening and Testifying in Legislative Settings

How? Four Learning Objectives of this Workshop

1) Promote awareness of Legal and Ethical Issues: Lobbying

2) Be able to read a “Call for Testimony” to identify key issues.

3) Be aware of at least four types of testimony format.

4) Develop confidence and comfort in drafting testimony and participating in the hearing process.

Case illustration: Disabilities issues- N.Y.’s Non-compliance with ADA Olmstead Decision and NY Chapter 551 (Corbett, 2009)

This workshop is designed to further exposure and proficiency objectives, (see The Community Psychologist, 41(2), Spring 2008, p. 68.) Also, this Workshop relies, in part, upon prior Public Policy 101 Workshops offered at SCRA’s 2005, 2007 and 2009 Biennials.
# Public Policy 101: Intervening and Testifying in Legislative Settings

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Presenter Background:

- **MA Community Psychology 1994**
- **Part time independent researcher: ARNOVA, ISTR, SCRA**
  Recent author of book on preventing nonprofit dysfunction through self-regulation (2011)
- **Volunteer Experience:**
  Chair Legislative Committee since 1999 on the Board of a disability nonprofit that representing 1400 families; testified twice before the New York State Legislature as a disability advocate.
- **Work Experience:**
  Testified ~30 times as staff member of NY State agency- consumer advocacy & public policy regulation of utilities
  Also, MA level practitioner: Employee Assistance Program Coordinator (part time) for Agency of 500 employees (1986-2006)

(N.Y.’s EAP is a Statewide workplace prevention model designed to promote employee wellness. Coordinators use a 3 session assessment & referral model, and are responsible for supervisory trainings and critical incidents. N.Y.’s EAP is identified as a model CP intervention by Duffy & Wong (1996, p. 259).
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Description of Handouts:
#1: IRS Guidance on lobbying from www.irs.gov.us

#2: Illustrative “Calls for Testimony” (two)

#3: Illustrative Testimony Formats (three)

#4: Prefiled Testimony: NY Legislature (Corbett, 2009)

#5 Hearing Minutes (transcript with 5 min. testimony limit)

#6 Post Chicago Action Steps– to proficiency and expertise
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#1 Legal and Ethical Issues:

• Intervening and testifying in legislative settings reflects an attempt to influence government action which could be at the local, state or federal level.

• The primary focus here is on state level intervention.

• States have widely differing views and regulations when it comes to influencing legislators and legislation which typically is called “lobbying”.

• Interventionists need be familiar with the regulations that apply whether local, state and/or federal to their situation which will vary based on their role & the intervention design.
#1 Legal and Ethical Issues: 
What is “Lobbying”? [June 2010 Update]

Lobbying is defined as an attempt to influence government action, which may be either by written or oral communication.

Some states (Delaware, Kansas & Texas) include providing entertainment, gifts, recreational events, food and beverages to legislators. Other states regulate disclosure of and amounts spent on such activities.  

[Note: lobbying could accidently be triggered depending upon your state’s regulations.]


Note: high level summary-- you must check your state’s requirements!  
[This resource provides a summary of each state’s law.]
#1 Legal and Ethical Issues: Who is a “Lobbyist”?

Accepting compensation is usually the primary issue. Most states define a lobbyist as one who receives any compensation or reimbursement to lobby.

Some exceptions (Hawaii, Minnesota and New York) establish threshold amounts of money and time which if exceeded trigger the definition of a “lobbyist”.

However, some jurisdictions have very broad definitions that do not have compensation or hours expended criteria. You must check your state’s requirements to see if, or how, they apply.

#1 Legal and Ethical Issues:
STATE LEVEL: New York State Illustration

Effective January 1, 2006 threshold for registration as lobbyist increased from $2000 to $5000.

Individuals, entities or nonprofits that expend or receive greater amounts in a calendar year must register and report lobbying expenditures.

This does not place restrictions on lobbying efforts but does establish registration and reporting requirements.

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#1 Legal and Ethical Issues: Federal Level

If you are lobbying on behalf of an organization, such as a nonprofit organization, there are restrictions such as against participation in political campaigns.

Such involvement stands to threaten a nonprofit organization’s tax exempt status-- even if you are acting in a volunteer capacity.

Nonprofit organizations have reporting requirements on their lobbying activities such as on their Form 990, filed annually with IRS.

Different rules for nonprofits, foundations, social welfare organizations w/ exceptions for nonpartisan analysis & research. See Handout #1 printed from <www.irs.gov.us>
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# Legal and Ethical Issues:

Conclusion:

- The effort to influence govt. action through oral or written form raises issues of lobbying and whether the interventionist is a “lobbyist”.

- Knowledge of applicable local, state and federal rules and regulations is necessary to comply with legal and ethical standards, as well as possible employer rules. When or where is line crossed into reportable lobbying?

- Interventionists need to consider the role they are contemplating playing, who they represent (individual, employer, nonprofit, government, etc.) and any regulations or bylaws that are applicable.

- Individuals should also be alert to conflicts of interest or their appearance and how they can be avoided or minimized.

- **Key Questions:** Note: Depends upon your state & circumstances. Where does interventionist lie on risk continuum? Ideally zero to low. Should intervention be modified to eliminate or reduce risk? If so, how?
#2 Reading a “Call for Testimony”:

- A “Call for Testimony” may be contained in a public document issued by one or both parties of a state legislature. It could be issued by the Assembly or Senate.

- It could be issued by a Committee or Task Force or Agency.

- It could be issued under a Joint Legislative Hearing Notice (i.e. before both the Assembly and the Senate).

- It could have a variety of titles such as including: “Notice of Public Forum”; “Notice of Public Hearing” or various other titles. Check with your state legislature for examples of how it issues its Notices that announce ways for the public to participate in the legislative hearing process.
#2 Reading a “Call for Testimony”:

- **What to Look For?**
  - who is it before? [one or both parties?; committee(s)?]
  - when? [during work day?; evening(s)?]
  - geographic location(s)? [choice?; multiple opportunities?]
  - participation rules? [pre-registration?; time limits?; TV/on-line?]
    - Do you need pre-approval to testify in person? To submit testimony?
  - form and format: written testimony requirements?
    - Filing procedures and deadlines?
    - Format requirements? [electronic versus paper; length; structure]
    - Number of copies
    - Specific questions to be addressed- Note: essential to address this!!

- These factors can substantially **restrict or enhance** your opportunity to participate and potentially influence the process. **Your intervention design should take into account these factors to maximize leverage.**
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#2 Reading a “Call for Testimony”:

• What to Look For?

Two illustrations: New York State Legislative Budget Hearings

A) December 2008 “Notice of Public Forum”

Who: N.Y. State Democrats before 5 Senate Committees
When: December 9, 11 and 19, 2008; all workday (9, 10am)
Where: Buffalo; Brookhaven; Oswego
Topic: New York State Budget Deficit
Specific Questions Asked: Yes; Seven Questions
Oral Testimony limit: Yes; 5-10 minutes
Oral Testimony: By Invitation Only: Not Televised live
Written Testimony Rqts.: 10 copies in person or electronic
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#2 Reading a “Call for Testimony”:

- **What to Look For?**
  
  Two illustrations: New York State Legislative Budget Hearings
  
  B) January 2009 Joint Legislative Hearing Notice
  
  **Who:** Senate Finance + Assembly Ways & Means Committees
  
  **When:** Ten days, one for each specific area; all day (am/pm)
  
  **Where:** Albany, with a two day pre-registration requirement.
  
  **Topic:** Governor Patterson’s Budget Proposals for 2009-2010
  
  **Specific Questions Asked:** No;
  
  **Oral Testimony limit:** Yes; 10 min. (*actual limit imposed: 5m.*)
  
  **Oral Testimony:** Invitation Only (not specified); televised live
  
  **Written Testimony Rqts.:** 40 copies, in person only

See Handout #2: Copies of two notices for 09-10 Budget Hearings
#2 Reading a “Call for Testimony”:

- What to Look For in the “Call” or “Notice”:

  * Key Information That Enables or Impedes Participation

  - Do you need pre-approval to submit testimony?
  - Do you need pre-approval to testify in person?
  - What locations and times dictate participation?
  - Responding immediately may get you ahead in the list.
  - Responding to multiple locations may increase odds.
  - Responding with multiple witnesses is a very effective plan.
  - Persistence in confirming your participation pays off.
  - Use phone, fax and e-mail to assert rights to participate.

  “Public Hearing Processes” are not always as “open” as they might appear on the surface!
#2 Reading a “Call for Testimony”:

Conclusion:

**What to Look For in the “Call” or “Notice”:**

*Key Information That Enables or Impedes Participation*

- “Public Hearing Processes” are not always as “open” as they might appear on the surface!

- Watch out for short notice, inconvenient times and undue restrictions on participation. How can you compensate?

- You must develop your intervention and strategy considering opportunities & limits of participation

*An Illustration: How about 3 minutes per witness, with a 9 public witness limit? How meaningful an opportunity provided?*
#3 Types of Testimony Format:

- Witnesses often have latitude on the format that they may use to present testimony.

- Many variations exist; familiarity with various types allows witness to select most suitable or preferred format.

- Considering the audience, typically legislators and agency executives, succinct and thorough testimony that addresses all relevant issues is likely to be most effective.

- Witnesses may wish to use graphs, charts and other visual aids as well as the use of Attachments that document and support your positions and recommendations.

- To exercise *expertise*, use relevant papers, publications and peer reviewed research as cites and as Attachments.
#3 Types of Testimony Format:
Illustrations from N.Y. State Budget Hearing 2/09

a. Paragraph style, unstructured, with 9 References.

b. Synopsis style, high level, with charts; No References.

c. Topical style, w/ charts, graphs & tables; academic paper with over 50 References.

These samples of testimony show how different witnesses have chosen to advance their points and positions using a variety of formats. Handout #3 contains three samples submitted by interveners at the February 2, 2009 Budget Hearing in Albany.
#3 Types of Testimony Format:
Illustrations from N.Y. State Budget Hearing 2/09

Note the differences in the use of References:

a. Paragraph style, unstructured, with 9 References.

b. Synopsis style, high level, with charts; No References.

c. Topical style, w/ charts, graphs & tables; academic paper with over 50 References.

Conclusion

Are legislators likely to rely on undocumented assertions?

Note wide variation in use of References. Select Format carefully.

Whatever format is selected, thorough use of references, cites and documentation is highly recommended, including attachments from key audits, legal provisions and any other relevant documents.

Provide it: Legislators lack time to chase down key documents.
This is an illustration of a fourth type of format, referred to as Q&A format because the entire testimony is comprised of questions that the witness constructs, along with the answers.

Before addressing this additional format, following is a brief overview of the content of the testimony to provide a sense of the issues, objectives and strategy upon which it is based.

The pre-filed direct was submitted at a hearing in Feb. 09 and witnesses were allowed 5 min. of oral testimony, subject to questioning by Senators and Assemblyman.
The testimony was prepared in response to a request from New York’s Legislators, requesting testimony on the 09-10 budget proposed by Governor Paterson. The Budget was to close a $15 Billion deficit. The Notice requested specific testimony in various areas including:

a) the identification of most vulnerable groups
b) long term effects of the cuts
c) steps to ensure sustainable revenue and financing in the future.

Testimony was prepared responsive to Legislative request.
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#4 Testimony Illustration: Q&A Format (Corbett, 2009)

Overview: Features of Testimony

• Testimony was prepared in Q & A format.
• Testimony addressed 3 questions requested by Legislature.
• Testimony proposed restorations and also additional funding for residential development (community housing for permanently disabled) totaling ~$250 million.
• Basis for Increase-- New York State is not in compliance with:
  ➢ Americans With Disabilities Act of 1990
  ➢ Olmstead Decision of 1999
  ➢ New York State’s Chapter 551, Article 25 implementing Olmstead
  ➢ Spending necessary to bring NY into compliance with Federal & State law as well as mitigate NY’s exposure to individual and class action lawsuits. Federal and State law guarantee and protect the rights of the disabled to live in the community in least restrictive settings.

Testimony also identified a new, incremental revenue source to fund instant and future costs at $1.5 billion per year, for three years, providing funding beyond the budget year.
Overview: Features of Testimony

• Testimony also documented, in support of the residential development funding, that a Comptroller’s Audit of Residential Development Program had been falsified.

• The Audit misrepresented that the promised number of new beds had been added when in fact they were not. The Audit had the effect of justifying cutting expenditures that support creation of new residential beds when in fact expenditures should have been increased. The testimony documented the assertions, through Attachments, including the concluding page of Comptroller’s Audit.

• The testimony also identified possible use of Federal Stimulus Funds to fund Residential Development to mitigate NY cost.

• Lesson: Witnesses must be prepared to address controversial issues and document malfeasance especially re: social justice.
What is the framework and format of the testimony shown on Attachment 4?

The testimony framework contains:

- Testimony purpose
- Relationship of witness to issue
- Relationship of witness to nonprofit org. (unpaid)
- Relevant education and experience
- Brief Overview of Community Psych. to educate legislators
- Testimony content and recommendations
- Related attachments that document Governor’s broken promises to the disabled and illustrating NY’s non-compliance with ADA, Olmstead Decision & NY Chapter 551, Article 25.
#4 Testimony Format Q & A (Corbett, 2009)

Describe the Q & A format used in preparing the testimony shown on Attachment 4?

- The pre-filed testimony was developed in question and answer form. This format was used as it enables a witness to more aggressively and effectively articulate the points to be made. That is, the questions are also used to develop the issues allowing more complete articulation as compared to the more common narrative styles. The format, however, is a matter of preference and may be at the discretion of the witness or may be specified, along with relevant issues, in the hearing notice.

- By reviewing the four illustrative types, witnesses can determine which type of format is preferred.
Beyond pre-filed direct testimony, after it is prepared, why is a hearing necessary?

The hearing creates the setting where legislators meet to hear directly from their constituents and witnesses, record their views, ask questions and more fully develop the record.

The written transcript contains a verbatim exchange of the witnesses comments and dialog with legislators. It provides a permanent record for analysis afterwards and is available to the general public. Attachment 5 is the live transcript which contains the oral testimony of the witness. Because this is often limited to five or ten minutes, witnesses must be prepared as to what they will focus on. **Note:** witnesses are advised to never “read” their testimony which is viewed as a waste of Legislators time because they can read it themselves. In this particular case, legislators asked no questions.
#4 Hearing Process

Participating in the Hearing Process

Why physically participate in the hearing?

- Interact in person, verbally with legislators
- Build rapport and trust with legislators
- Answer any questions legislators may have
- Advocate, defend and reinforce key points
- Place recommendations in larger context, integrate others’ testimony that reinforces your own
- Offer in person to further assist legislators, if helpful
- Make provocative statements or assertions you can defend to further one’s own position and engage the political process
#4 Hearing Process

Pre-filed testimony is shown in Q&A format (Att. 4) and live testimony is shown (Att. 5). Is it advisable to participate only one of the two forms?

Many witnesses only submit pre-filed. Others only make public statements. Both forms have their strengths and opportunities. Most experienced witnesses participate in both forums. **Failure to participate in person very likely undermines your credibility and ability to exercise power with legislators to influence them to implement your recommendations. Why? Legislators are denied the opportunity to question your testimony, challenge portions they may not agree with or don’t understand. They, and you, are deprived of the opportunity to clarify your position, harming both of you. If you are willing to write it-- be prepared to defend it. Don’t participate at your own peril!**
Final Comments for Participating in the Hearing Process

A. Suggested guidance for witnesses:

- Participate in the full process
- Arrive before the session begins and remain until the record is closed; important information, rules and/or guidance may be provided by the Legislator chairing the hearing during those times
- At times, sensitive, but important discussions, may occur off the record; if you are present and you know the content you may participate and even influence the off the record discussion, potentially to your own substantial benefit.
Public Policy 101

#4 Hearing Process

Final Comments for Participating in the Hearing Process

A. Suggested guidance for witnesses:

• Note which Legislators participate and their interests
• Listen to all witnesses, esp. related to your issues
• Identify linkages and support from all other witnesses and legislators
• When you testify, synthesize others’ comments to defend, bolster or expand your recommendations on the spot to advance your testimony purposes
Public Policy 101

#4 Hearing Process

Final Comments for Participating in the Hearing Process

A. Suggested guidance for witnesses:

• While you must explain and defend your position, it is always preferable to leave the stand w/ a stronger position than when you started. Harnessing others testimony to advance your own position is a unique opportunity skillful witnesses exploit.

• Remember, as a witness, you control the time it takes you to respond. When under pressure, take all the time you require to carefully think through your comments and response.

• If you have been testifying awhile, and are under pressure, you can ask the Chair for a brief recess. Depending upon the schedule, it might be granted.
#4 Hearing Process

Final Comments for Participating in the Hearing Process*

B. Potential Strengths of Community Psychologists as witnesses

• Community Psychologists’ values are inherently public interest oriented. They include a concern for all members of a community, including various under represented and disadvantaged populations.

• These populations present Legislators with great concerns, as they search for solutions to meet constituent needs.

• Legislators’ obligations to the public and respect for the power of vulnerable constituents render them vulnerable to such value based thinking and solutions that advance the broader public interest.

#4 Hearing Process

Final Comments for Participating in the Hearing Process

B. Potential Strengths of Community Psychologists as witnesses

• Community Psychologists should never be perceived as advancing partisan self-interests— but rather seen as keen advocates for public interest oriented causes.

• Synthesizing problems for Legislators while also developing recommendations within a broader societal context that furthers the public interest, s/b a forte of Community Psychologists— given their prevention orientation & training to design systems level interventions to favor second order change.
Final Comments for Participating in the Hearing Process

B. Potential Strengths of Community Psychologists as Witnesses

• Community Psychologists have the values and the training to provide strong insight into societal problems facing Legislators, from a public interest oriented framework, compatible w/ Legislators’ public mandate.

• Community Psychologists will also be viewed as neutral—compared to the many partisans who plague Legislators to advance their own self-interests.

• Community Psychologists are very well positioned and trained to exercise their power in legislative settings that will further both Legislators’ and public needs.
Conclusion:

TAKING IT TO THE NEXT STEP ??

from exposure and proficiency to…
proficiency and expertise ??

Are you interested and willing to further develop your public policy influencing skills ??
Public Policy 101: Post Chicago, Illinois

Conclusion: Action Steps to Advance 4 Learning Objectives

This workshop was designed to further exposure and proficiency objectives [TCP, 41(2), p. 68]. Do you wish to go further?

Optional Action Steps you can take now will advance both proficiency and expertise objectives. They will significantly enhance your ability to intervene in the public policy arena.

For those willing to further apply and develop their public policy intervention skills, following are recommended Action Steps for each of the four Learning Objectives, with estimated timeframes for completion. You can choose to take this workshop content to the next level.

As questions arise on the Workshop materials or Action Steps, please contact me anytime at chris_corbett1994@hotmail.com.
Conclusion: Action Steps to Advance 4 Learning Objectives

Following are the four Learning objectives, action steps and est. time rqd.

1) Promote awareness of Legal and Ethical Issues: Lobbying
   a) Obtain & examine your state’s lobbying regulations (i.e. internet search) 45 mins.
   b) Request appt. w. Assembly member or State Senator’ staff to discuss /introduce self. 90 mins.

2) Be able to read a “Call for Testimony” to identify key issues
   a) Obtain at least two copies of hearing notices issued by your State Legislature. 30 mins.
   b) Examine in detail all requirements, procedures & conditions of participation. 30 mins.

3) Be aware of at least four types of testimony format
   a) Read in their entirety all three illustrative sets of testimony 45 mins.
   b) Identify what you found convincing or not. Examine support and References. 60 mins.
   c) Identify strengths and weaknesses of each; if you had to choose one format, which one? 60 mins.

4) Develop confidence /comfort drafting testimony & participating in hearing process
   a) Read Q&A style format testimony (Corbett, 2009). Reflect on your qualifications/roles. 90 mins.
   b) Focus on your qualifications, experience, research interests. Develop a written response to the Question: Describe relevant education and experience that influences your testimony. 45 mins.
   c) What expertise can you incorporate into your testimony, papers, peer reviewed rsch. etc. 30 mins.
   e) Read the Hearing Minutes (Attachment 5). Reflect on differences of written vs. oral. You have 5 minutes of live testimony before Legislators, “what most speaks to them?” 30 mins.

As questions arise on any Workshop materials or the Action Steps, please contact me anytime at chris_corbett1994@hotmail.com.