



Inside Oversight: Levin Center at Wayne Law Tutorials

SERIES 1 CONDUCTING THE INVESTIGATION

Tutorial: Handling Objections to Information Requests

In this video, Levin Center experts offer tips and advice on how to handle a variety of objections to requests for information made during a Congressional investigation.

Instructors

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Subcommittee on Investigations

Transcript

Elise: Hi. I'm Elise Bean, and this is Zack Schram, and we'd like to share with you some tips we've learned over the years on how to handle objections to information requests made during an oversight investigation. Both of us conducted oversight inquiries for Senator Carl Levin on the Permanent Subcommittee on Investigations in the U.S. Senate.

Zack: Good investigations depend upon obtaining the documents and interviews needed to find out what really happened. But getting that information isn't always easy. In this segment, we'd like to offer you some tips on how to handle objections to your requests for information.

Know Your Rights and Responsibilities

Elise: Tip Number One: Do your homework. As a Congressional investigator, you need to understand the legal rights of Congress to obtain information as well as your legal responsibilities as a public servant. The Supreme Court has upheld the rights of Congress to conduct broad inquiries with a legislative purpose. At the same time, those rights are not without limits, both legal and political. To help you educate yourself on what Congress can and can't do, we've compiled a tip sheet on how to respond to a variety of objections. Feel free to download the 5-page tip sheet from the Levin Center website.

To review the Levin Center's Tip Sheet,

**“HANDLING OBJECTIONS TO
THE PRODUCTION OF REQUESTED INFORMATION,”**

visit: law.wayne.edu/handlingobjections

Consult with Senate/House Legal Counsel

Zack: Tip Number Two: A lot of complicated legal issues can arise when requesting documents or testimony. They include issues related to attorney-client privilege, Fifth Amendment rights against self-incrimination, trade secrets, and more. To navigate the issues, one of the most useful steps you can take is to contact the House or Senate legal counsel's office and ask for help. Their attorneys can offer advice on how to formulate requests to avoid legal problems, help resolve disputes, and even attend a meeting, interview, or hearing on your behalf.

Be Respectful, Flexible, and Ready to Negotiate

Elise: Tip Number Three: Even when the law is on your side, it's usually not a winning strategy to go into a meeting with guns blazing and issue ultimatums. Antagonizing the subject of an investigation may make them dig in their heels and opt for a court battle instead of providing the information. A better strategy is to let the subject know Congress has a legal right to the requested information, but you are willing to negotiate to accommodate legitimate concerns. To be effective, you need to work out beforehand possible accommodations you can offer. Another useful approach is to ask the objecting party for its own ideas on how to accommodate its concerns. Being respectful, flexible, and creative in your negotiations can help convince the objecting party to cooperate.

Be Bipartisan

Zack: Tip Number Four: To the extent you can, it is best to respond to objections with a united bipartisan position. Opposing counsel may try to employ a divide-and-conquer strategy by asking to meet with staffers from each party separately. Separate meetings are a mistake, however, that weaken Congressional staff and empower the objecting party. Instead, the objecting party should be required to say whatever it has to say in front of both sides of the aisle at the same time. A bipartisan rejection of its objections is more likely to get the objecting party to back off. It may also strengthen your ability to overcome future objections, as word gets around that partisan tactics won't work in your shop. Supporting your colleagues across the aisle in obtaining needed information is also great way to build bipartisan bridges, set the stage for your colleagues to return the favor, and burnish the reputation of your investigative team as one that can't be messed with.

Encourage Cooperation

Elise: Tip Number Five: If the law is on your side, you've been respectful and accommodating, but the objecting party still won't produce the information, consider other ways to encourage cooperation. Perhaps the objecting party has a good relationship with your boss or the Committee, which they don't want to jeopardize, and you can warn them they are not making any friends by their conduct. Perhaps your boss could call the agency head or company CEO. Another tactic is to warn them that you may go public or actually go public in a press release or floor statement disclosing their lack of cooperation with the investigation. A tougher alternative is to hold a hearing focused solely on the party's failure to provide requested information. In considering those or other measures to obtain information, it is important to avoid taking actions that would enable the objecting party to portray your boss as acting unfairly.

Consider Contempt as a Last Resort

Zack: Tip Number Six: If the objecting party still won't produce the requested information, a last resort is to try to hold the party in contempt of Congress. The process isn't quick or easy – it requires votes by your Committee and the entire House or Senate as well as court filings by the legal counsel's office – but it can force the production of requested information. The latest example is a 2016 court decision in *PSI v. Ferrer* which rejected objections to a Senate subpoena by a company called Backpage.com and ordered the company to produce documents related to its involvement with sex trafficking on the Internet. If you want to consider invoking the contempt process, your first step should be to confer with the Senate Legal Counsel or the House General Counsel.

Handling Objections to Information Requests

- 1. Know your rights and responsibilities.**
- 2. Consult with Senate/House legal counsel.**
- 3. Be respectful, flexible, and ready to negotiate.**
- 4. Be bipartisan.**
- 5. Encourage cooperation.**
- 6. Consider contempt as a last resort.**

Elise: Getting information is key to a good investigation. We hope these tips will help you formulate an effective response to any objections.

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