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SERIES 1
CONDUCTING THE INVESTIGATION

Tutorial: Designing an Effective Document Request

In this video, Levin Center experts offer tips and advice on how to design an effective document request in a Congressional investigation.

Instructors

Elise Bean, Former Staff Director and Chief Counsel
Zack Schram, Former Senior Counsel, U.S. Senate Permanent Subcommittee on Investigations

Transcript

Zack: Hi. I'm Zack Schram and this is Elise Bean, and we're here to share with you some tips we've learned over the years on how to make effective document requests in a Congressional investigation. Both of us conducted oversight investigations for Senator Carl Levin on the Permanent Subcommittee on Investigations in the U.S. Senate.

Elise: An essential ingredient in most effective oversight investigations is a collection of key documents that show what happened. In this segment, we'd like to focus on how to request those documents.

Zack: A document request is usually made by sending a letter or a subpoena from a Congressional committee or subcommittee to the document holder. In both cases, the documents you want can be listed in an attachment. Here are some tips to making the most of that attachment.

Making it a bipartisan request

Elise: Tip Number One: If possible, make the document request bipartisan. Start by asking both sides of the aisle to list the categories of documents they want, combine them into a single list, and work on the wording together. The goal is to get a single attachment to a single letter or subpoena supported by both parties. Recipients take bipartisan document requests much more seriously. In addition, document requests that address the interests of both parties are more likely to foster bipartisan goodwill, produce a more thorough and thoughtful collection of documents, and build a better foundation for reaching consensus on the facts.

Conducting a preliminary meeting

Zack: Tip Number Two: Before you write the document request, meet with the document holder, and try to find out everything you can about the records they keep. Ask about the names of reports and key memoranda, their contents, and frequency; whether their people use email or instant messaging; and the names of key individuals involved in the facts. Try to get copies of typical documents so you can see what types of information they include. Talk to an insider, if possible, to get a sense of the available and useful documents. At the same time, your investigative team should be researching the key issues, so you know what types of information will be important. The more you know beforehand about the key issues and available documents, the better your document request will be.

Assuming a narrow reading

Elise: Tip Number Three: Assume the recipient of your request will read it as narrowly as possible to minimize what they have to produce. That means you have to clearly ask for what you want. It helps, after writing the request, to read it again as if you were the opposing counsel looking for loopholes or grey areas, so you can fix any problems. It also helps to have other sets of eyes review the wording. Don’t worry about requests that require a lot of words – use as many words as needed to spell out exactly what you want. Include definitions of terms like “document” and “communication” to capture the relevant materials. See if your committee has prior document requests you can use to get started. You can also get help from attorneys with the House General Counsel or Senate Legal Counsel.

Asking for a limited number of documents

Zack: Tip Number Four: Instead of asking for all documents on a topic and getting a lot of materials you don’t need at a huge cost to the producing party, aim for a manageable volume of documents with highly useful information. Again, the more you know about the issues and documents at issue, the better off you’ll be. One key consideration is how far back in time you go – do you really need tenyear-old documents or is three years enough? Another approach to consider is fashioning a broad request while at the same time letting the recipient know you are willing to accept an initial smaller sample of documents so you can evaluate which ones are the most useful. Again, the overall goal is not to ask for everything, but to zero in on the most useful groups of documents.

Going from easy to hard

Elise: Tip Number Five: When structuring your document request, start out with the least controversial and easiest requests, then move to the harder, more controversial ones. That way, when you begin negotiating over the request, you can start with the easy stuff and get agreement on some solid document production, before moving to the tougher issues. More broadly, assume that you will almost always have to negotiate over your document requests, because most requests require some interpretation. Encourage the recipients to call you to clarify what you want. Maintaining a positive, open line of communication with the recipients will help both sides advance the document production process.

Including certain document categories

Zack: Tip Number Six: Here are a few useful categories of documents that you should consider including in any request. For requests going to an agency, corporation, or organization, consider requesting organizational charts for each year during the relevant time period, so you can figure out how the entity was structured over time. If there are parallel criminal or civil investigations going on, ask for a copy of all documents produced to the prosecutor or regulator. If there is a special report, memo, or other key document you know about, ask for it specifically. If you know the names of key individuals involved in the facts, name them and ask for their emails, correspondence, and other communications during the relevant time period.

Designing Effective Document Requests

1. **Aim for bipartisan document requests.**
2. **Conduct a preliminary meeting with the target.**
3. **Assume document requests will be read narrowly.**
4. **Limit request to a reasonable volume of useful documents.**
5. **Go from easy to hard document requests.**
6. **Consider including certain categories of documents.**

Elise: Once your document request is prepared, here are five last-minute items to consider before sending it out the door.

Obtain needed signoffs

Zack: Checklist Item One: Make sure you have all the signoffs you need. First is your supervisor and second is your boss, which may include obtaining a signature on the request letter or subpoena. Third is a sign off from your bipartisan counterpart, if it is a joint request. Even if it's not, a best practice is to provide the request to the other side of the aisle before it goes out, both as a courtesy and to prevent your counterparts from being blindsided if someone complains. Finally, if you work for a subcommittee, you might have to get signoff or provide notice of the document request to the full committee.

Check names, dates, and addresses

Elise: Checklist Item Two: Check all names, dates, and addresses on the document request and cover letter. If you are sending out multiple requests, it is easy to misspell a name, mess up a job title, or mix up an address. To avoid problems, always go through the cover letter and document request one last time to ensure the names, dates, and addresses are correct and match up.

Double check the recipient

Zack: Checklist Item Three: Make sure you are sending the document request to the right person, especially if it is a subpoena. For a corporation, make sure you have researched the corporate chain, identified the business unit with possession or control of the documents, and are using the correct legal name. For an agency, make sure you've identified the right office and location. If you name a senior official or executive, double check that person is still in charge.

Call ahead

Elise: Checklist Item Four: Before you send the document request, alert the recipient or their legal counsel that it's coming. Dropping a document request on someone with no prior notice is not only bad form, it's risky. The office may be closed, the subject of the request may have switched legal counsel, or the persons present may decline to accept an unexpected request. Better to call ahead or send an email to arrange a delivery time. If the recipient or their attorney declines to accept service of a subpoena, you can use a U.S. Marshal to serve it on them instead. But calling ahead is usually all it takes.

Provide a heads-up to an affected Member of Congress
Zack: Checklist Item Five: If you think the recipient is likely to complain to a Member of Congress, you may want to give a heads up to that Member's staff so no one is caught by surprise. The Member's office will usually be grateful for the prior notice even if they disagree with aspects of your investigation.

Last-Minute Check List
Before Sending out a Document Request

1. **Obtain all needed signoffs.**
2. **Check names, dates, and addresses.**
3. **Double check the recipient.**
4. **Call ahead.**
5. **Provide a heads-up to an affected Member of Congress.**

Elise: Getting the right documents is critical to getting the facts and showing what really happened. We hope these tips will help you design effective document requests.

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