When Congress investigates, even the most sophisticated businesses feel as though they have fallen through the looking glass. The rules of Congressional investigations are entirely different from those governing law enforcement investigations.

- The issuance of, response to, and enforcement of subpoenas is different.
- The rules governing the taking of oral testimony, whether through staff depositions or testimony in open committee, are different.
- The application of common law privileges is different—often in startling ways.
- Media coverage, public relations, and partisan politics are often significant determinants of the course of the investigation.

In this unusual setting, the playing field is not level, and it is not meant to be. Yet what occurs in a Congressional investigation can have devastating implications for the course of law enforcement and other executive branch investigations, a company’s public image, filed or contemplated civil lawsuits, and a company’s business and regulatory interests involving the government. Managing these situations requires special experience in addition to the lawyering skills associated with other forms of investigations or formal proceedings. Representing a client’s interests in this context often requires the ability to identify, understand and resolve strategically the substantive legal, policy and political issues and to navigate the process procedurally. Whether advising companies on the appropriate tone and process to respond to a Congressional inquiry or subpoena, preparing and representing witnesses in connection with Congressional testimony, interacting with an investigating Committee, Member or staff, or managing the legal, policy, political, or public relations considerations outside of the investigating Committee, the Sidley Congressional Investigations team has the necessary resources to help a client navigate this often unfamiliar and hazard-filled terrain.

Congressional investigations have a distinct procedural, practical, and substantive landscape that sets them apart from other kinds of litigation. Consider:

- There is no neutral decisionmaker;
- There are no rules of evidence;
- Congress claims it is not required to recognize common law evidentiary privileges;
- Many requests or demands for information will, as a practical or legal matter, lack an effective mechanism for compelling obedience, at least in any reasonable time period;
- Questioners may be non-lawyers and may be motivated by considerations far removed from a determination of the facts; and
- Those same individuals may have the power to change the applicable law.

These just begin to describe the differences. Needless to say, the tools, background, and expertise of a typical litigator are generally not sufficient to navigate this landscape sure-footedly. Yet neither are Congressional investigations mere government relations exercises. Responding properly to a Congressional investigation requires a combination of legal skill, political judgment, and applicable experience. In counselling companies, corporate executives, and public officials on how to respond to Congressional inquiries and prepare for Congressional hearings, Sidley’s Congressional Investigations team draws on its considerable experience to formulate strategies tailored to the unique features of Congressional probes. Such strategies are designed to minimize the unique risks probes can present.

Understanding the dynamics of the Federal Government.

Development of an appropriate strategy requires understanding who is asking for the information and why. Is it an official committee or subcommittee of the House or Senate, an individual committee chair, or simply an individual Member or group of Members from the majority or minority party? What are the goals of the investigating entity or Members? Are they policy-oriented? Political? Investigative? What other
institutions or entities may be involved and how? To what extent will partisan, political, or policy issues play a role in the inquiry? The answers to these questions can have a major impact on the proper course of action. Sidley has extensive experience with the Congressional committees that have investigative jurisdiction and their staffs in both Houses of Congress. Our team understands the players in both political parties, the political and policy context in which they are asking their questions, and how they are likely to react to various tactics and strategies our clients might adopt in response. We also take into account the potential effects of election cycles, news cycles, and the Congressional calendar, which can also have an important impact on those strategies.

**Understanding the formal and informal powers of the investigators.**

The sources of leverage on both sides of a Congressional investigation are often quite different from those that exist in litigation. Although rules of procedure typically play a far smaller role in Congressional investigations than in other types of litigation, understanding the rules of the relevant Congressional committee and the rules of the individual house of Congress of which it is a part, is an important starting point for evaluating the rights and leverage of each party to these disputes. In addition to understanding those rules, Sidley’s lawyers design strategies that take into account the practical likelihood that subpoenas can be issued or successfully enforced, the external deadlines or timeframes under which the investigating committees are operating, committee resource constraints, the views and dispositions of individual committee members and the political balance of forces in the relevant chambers.

### Addressing the unique features of Congressional confrontations.

Congressional investigations can play out in hearing rooms, on live television, on the front pages of major newspapers, and in the online outlets of new media. Unique reputational interests may be at stake, both for companies and their executives, in addition to the legal, regulatory and policy interests. Press leaks can be a tool the investigators use to bring pressure to bear on subpoena recipients. The course of such investigations may be affected by political factors wholly extraneous to the issues at hand. Sidley’s lawyers are experienced in considering the ways in which press coverage can affect the strategies of both sides, and in working closely with its clients and with leading public relations firms to help anticipate and mitigate the effects of such coverage. Sidley’s Government Strategies group members have deep Congressional experience and ensure that our legal strategies are appropriately complemented and bolstered by optimal political and public relations strategies.

### Tailoring document production and defense strategies.

Determining how to respond to a Congressional document or information request depends upon many factors. Did the request take the form of a letter or subpoena? From whom? What powers do those individuals have in the committee and the chambers to which they belong? Depending upon the answers to these questions, the appropriate response might be no response at all, a polite letter, or a full-blown document production effort. Determining how to respond and what to produce, when, and how, requires active engagement with committee staff and on occasion with members of Congress. Sidley’s Congressional Investigations team will often work with the investigating committee (majority and minority Members
and staff), conduct briefings for selected Members or staff, draft white papers, and design arguments with the individual attitudes and propensities of the Chairmen, Ranking Minority Members, and other key influencers, potentially including party leadership, in mind. When the decision is made to produce documents, Sidley attempts to negotiate appropriate confidentiality protections where necessary, and to negotiate the scope, sequence and timing of production to serve the client’s interests while also satisfying the committee’s demands.

Preparation of witnesses to testify before Congressional committees.

Witness preparation for Congressional interviews, depositions, and especially hearings, differs in important respects from witness preparation in other settings. Sidley has extensive experience preparing company CEOs and others to testify before Congress. These are often challenging encounters, but there are proven strategies for looking and sounding as good as possible while still avoiding legal exposure and protecting important interests. In addition to the normal tools, Sidley anticipates the likely questions that will arise at hearings based, in part, on the personal knowledge and direct Congressional experience of members of Sidley’s team, including former Congressman Rick Boucher, a 28-year veteran of the House of Representatives. We develop briefing books, Q&A documents, opening statements, and statements for the record to assist witnesses in preparing and testifying. We also help train witnesses on how to answer the kinds of questions they may expect from Congressmen and Senators, which often differ from those in a typical legal proceeding. In some instances, mock hearings can be conducted and videotaped to aid in refining witness presentations.

Mitigating collateral consequences.

In addition to the reputational risks arising from bad publicity, Congressional investigations carry with them unusually high risks of sparking other kinds of investigations and claims. A Congressional appearance that goes poorly, and results in adverse publicity or an adverse committee report, can spin off regulatory or other investigations within the executive branch, civil lawsuits by private litigants or by the federal or state governments. It can also prompt formal criminal referrals to the Department of Justice, either for suspected underlying criminal activity or for lying to Congress. Mitigating these risks and avoiding such collateral impacts is an important objective in virtually every Congressional appearance and must inform all aspects of the strategy for responding to a Congressional probe. Giving suitable attention to these vital objectives and designing effective strategies to mitigate them is one of the important ways in which Sidley’s integrated Congressional investigation teams, which include professionals from the firm’s White Collar and Government Strategies groups, help protect clients.

SIDLEY’S CONGRESSIONAL INVESTIGATIONS PRACTICE

Sidley’s Congressional Investigations team has the experience and skills to meet these special challenges.

Cross-functional, interdisciplinary teams.

By design, Sidley’s Congressional Investigation team combines the strength of our Government Strategies, White Collar Litigation and various regulated industries practices to give clients a team that:
Has deep experience with Congressional investigations — from both the Congressional and respondent side. Former Congressman and Global Coordinator of Sidley’s Government Strategies practice, Rick Boucher, served as a senior Member of the Energy and Commerce Committee, where he chaired two subcommittees that conducted scores of hearings.

- Knows how to develop an appropriate tone in managing the process with congressional investigators.

- Has experience preparing clients to testify in high-stakes matters, in helping clients to avoid perjury traps and advising clients on invoking constitutional rights and privileges to avoid testifying or declining to answer particular questions. Uses its lawyering skills, as well as its understanding of the process, and the key players and their motivations, to identify the substantive, policy and political landscape, and develop strategies to resolve the issue at hand and mitigate collateral consequences.

- Can access significant substantive experience in underlying areas of law and regulation as diverse as health care, food and drug, banking and financial regulation, energy, environmental, privacy and data security, government contracts, SEC disclosure, and export controls and trade sanctions.

Extensive background in both political branches of government.

The Sidley team is comprised of lawyers who have deep experience in both Congress and the Executive branch. In addition to former Congressman Boucher, the Sidley team includes alumni of important investigative committee staffs who participated in many Congressional investigations and understand how committees, Members, and their staffs think — what their goals are and what influences them. Our team also includes numerous executive branch veterans who have dealt with Congress on behalf of the White House and other federal agencies. Six different lawyers on our team, while serving in the White House Counsel’s Office, have helped defend three different presidents and White Houses in Congressional oversight investigations. Our ranks also include former General Counsels of the Department of Health and Human Services, the Environmental Protection Agency, Office of Management and Budget, the Department of Energy, the National Security Council, and the Department of Agriculture. Team members also include senior lawyers from the United States Trade Representative’s Office, the Securities and Exchange Commission, and the Department of Justice, including an Acting Attorney General of the United States. All are available to provide advice and insight in service of our clients. We also have lawyers who hold the highest levels of security clearance and have practiced before Congressional Intelligence Committees. These resources give Sidley a robust understanding of legislative and executive branch perspectives, including how executive branch agencies and Inspectors General are likely to respond to requests for further, formal inquiries and what collateral consequences may flow from these inquiries.
**REPRESENTATIVE MATTERS**

Sidley was one of the first national firms to establish a significant presence in Washington, D.C.; it has had an office in the nation’s capital since the late 1960s. Since that time, the firm’s lawyers have handled an array of Congressional probes, including for clients caught up in many of the major political scandals of the past four decades. Our experience spans a wide range of investigative subject matters, Congressional investigating committees, and client types, including corporations and their executives, individual private citizens, and public officials. In the past, Sidley has represented:

- The former CEO of Freddie Mac in connection with Congressional hearings and other matters arising out of the financial crisis and appointment of a conservator at Freddie Mac.
- The U.S. Attorney General’s former Chief of Staff, in connection with investigations conducted by the Senate Judiciary Committee, including joint House/Senate depositions and televised Senate hearings, into the termination of certain U.S. Attorneys.
- A major defense contractor in a Senate Armed Services Committee investigation into the use of private subcontractors in Iraq and Afghanistan.
- A leading trade association in connection with a Congressional inquiry into marketing practices and the regulatory framework involving the industry it represents.
- A leading pharmaceutical manufacturer in connection with a Congressional inquiry into its marketing practices.
- A leading biotechnology firm in connection with a Congressional inquiry into the pricing of certain of the company’s products.
- An agricultural company and its chief executive in Congressional hearings relating to a food recall stemming from an outbreak of infection.
- A major industrial company in a Congressional probe of the impacts of the new healthcare law on public company financial reporting.
- A leading private investment entity in connection with a Congressional inquiry into issues relating to programs used by the federal government to encourage lending and investment after the financial crisis.
- The president and government of a sovereign country in connection with a U.S. Senate investigation of alleged money laundering and related banking offenses at Riggs Bank.
- A prominent local lobbying firm as well as an individual in connection with separate Congressional and DOJ investigations of alleged gratuities paid to Members of Congress.
A former White House official in connection with the Jack Abramoff and Valerie Plame investigations.

The Major League Baseball Players’ Association in connection with Congressional investigations of steroid use in Major League Baseball.

A private individual and campaign contributor in the investigation of President Clinton’s pardon of Marc Rich.

A non-profit organization in connection with GAO, Office of Inspector General, and House and Senate investigations related to Hurricanes Katrina and Rita.

Individuals in connection with campaign finance investigations.

Individuals in connection with Whitewater and Travelgate investigations.

General Richard Secord in Congressional Iran-Contra investigation.

A university president in connection with Senate Finance Committee investigation of allegedly questionable expenditures and reimbursements.

Senator Donald Riegle in Senate Ethics Committee’s “Keating 5” hearings.

An individual in connection with Congressional investigation of a leader of college-based teacher educational programs.

Sidley lawyers, while serving as Members of the White House Counsel’s Office, also represented the President and the White House in connection with Iran-Contra, the Clinton-era Whitewater and Lewinsky investigations, the investigation into the collapse of Enron, the separate House and Senate investigations into the federal response to Hurricane Katrina, and the investigation into the Bush Administration’s warrantless wiretapping counterterrorism intelligence program.

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