

VENABLE[®]LLP

Government Investigations & Nonprofits:
At Least Two Branches Are Out to Get You

Ronald M. Jacobs & Alexandra Megaris



Agenda

- Preventing Government investigations
- Managing organization's response to Government inquiry
- Responding to requests for documents
- Conducting internal investigations
- Preparing employees for interviews
- Testifying before Congress
- Managing public relations fallout and the media



Government Investigations & Nonprofits



Informa
Oversight Ch
Complia

Washington, DC
Chairman Charles
Revenue Service
general informa
updates on IRS au

The Washington Post

Compensation

Albany, NY (August 3, 2011)

Governor Andrew M. Cuomo today announced that he has created a new task force to investigate the executive and administrator compensation levels at not-for-profits that receive taxpayer support from the state. The task force will be led by the New York State Inspector General Ellen Biben, Secretary of State Cesar A. Peralas, the Medicaid Inspector General Jim Cox, and the Superintendent of the Department of Financial Services Benjamin Lawsky.

What You Can Do Today to Prevent Becoming a Target

- Consider program risks
- Implement/update compliance programs
- Conduct mock audit
- Hire a compliance officer
- Stay current with agencies and congressional committees that have jurisdiction over your organization and industry
- Implement/strengthen document management plans
- Check in with your vendors



The President of Your Organization Called. She Just Received a Letter...

CHARLES W. BOUSTANY, JR., LOUISIANA
SUBCOMMITTEE CHAIRMAN

DIANE BLACK, TENNESSEE
AARON SCHROCK, ILLINOIS
LYNN JENKINS, KANSAS
KENNY MARCHANT, TEXAS
TOM REED, NEW YORK
ERIK PAULSEN, MINNESOTA

JOHN LEWIS, GEORGIA
SUBCOMMITTEE RANKING MEMBER
XAVIER BECERRA, CALIFORNIA
RON KING, WISCONSIN
JIM McDERMOTT, WASHINGTON

Congress of the United States
House of Representatives
COMMITTEE ON WAYS AND MEANS
WASHINGTON, DC 20515
SUBCOMMITTEE ON OVERSIGHT

DAVE CAMP, MICHIGAN, CHAIRMAN
SANDER M. LEVIN, MICHIGAN, RANKING MEMBER
COMMITTEE ON WAYS AND MEANS

JON TRAUJL, STAFF DIRECTOR
JENNIFER SAFAYAN, COMMITTEE GENERAL COUNSEL
AND SUBCOMMITTEE STAFF DIRECTOR

JANICE MAVS, MINORITY CHIEF COUNSEL
KAREN McAFEE, SUBCOMMITTEE MINORITY STAFF

- Is the Government alleging wrong-doing or simply gathering information?



United States of America
Federal Trade Commission

CIVIL INVESTIGATIVE DEMAND

1. TO

195
Assistant General Counsel

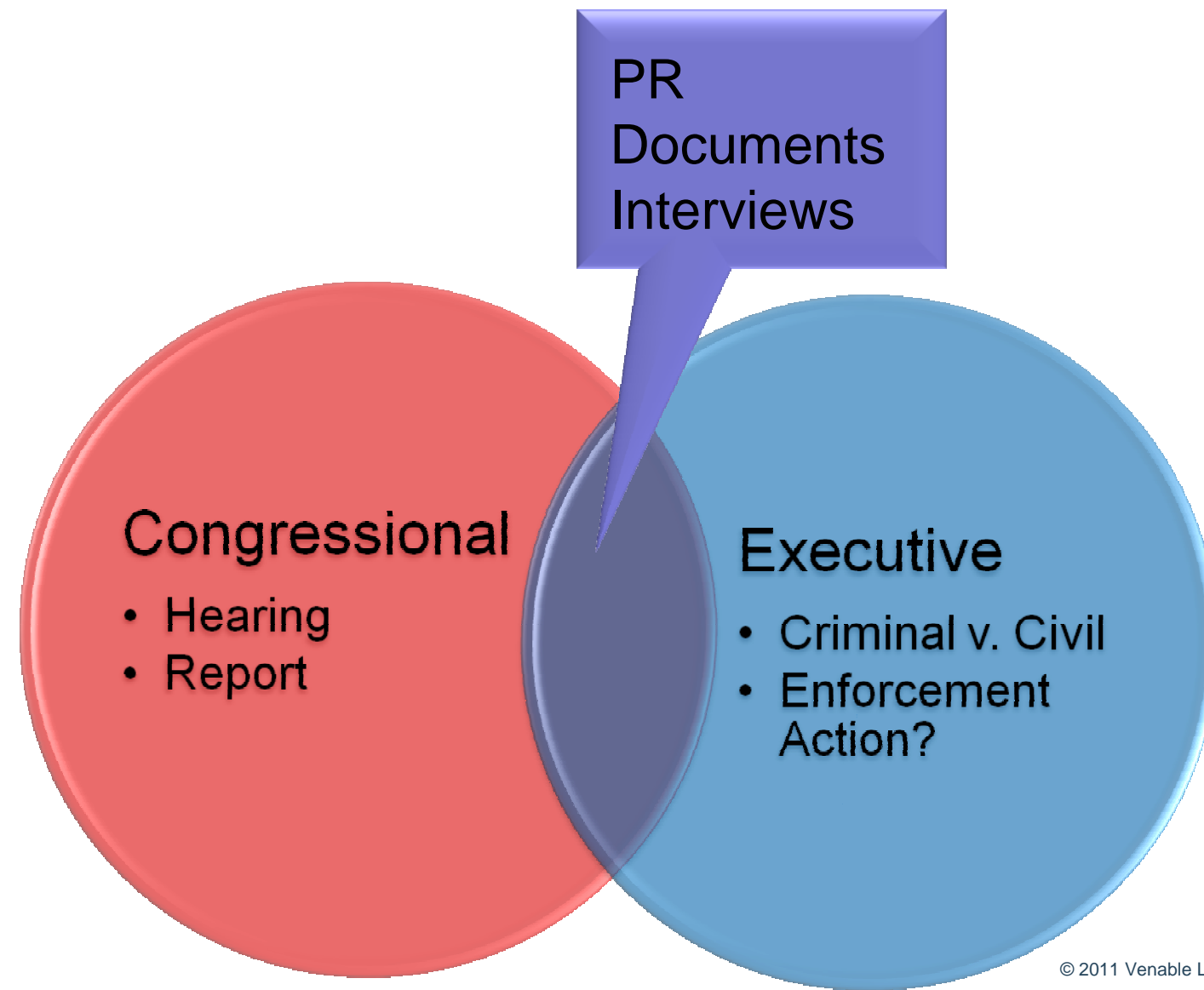
This demand is issued pursuant to Section 20 of the Federal Trade Commission Act, 15 U.S.C. § 57b-1, in the course of an investigation to determine whether there is, has been, or may be a violation of any laws administered by the Federal Trade Commission by conduct, activities or proposed action as described in Item 3.

2. ACTION REQUIRED

You are required to appear and testify.



Responding to Different Branches



Document Requests/Subpoenas

Review request/subpoena with experienced in-house counsel and/or outside counsel

Establish a custodian of records

Identify employees who may have responsive materials and conduct interviews

Establish a litigation hold (including electronic documents)

Determine scope of privileged materials



Electronic Documents

- Meet with Company I.T.
- Identify electronic media covered by subpoena
- Don't forget all removable/portable media
- Preserve electronic documents covered by request/subpoena
- Suspend electronic document destruction procedures and policies
- Consider hiring an outside vendor

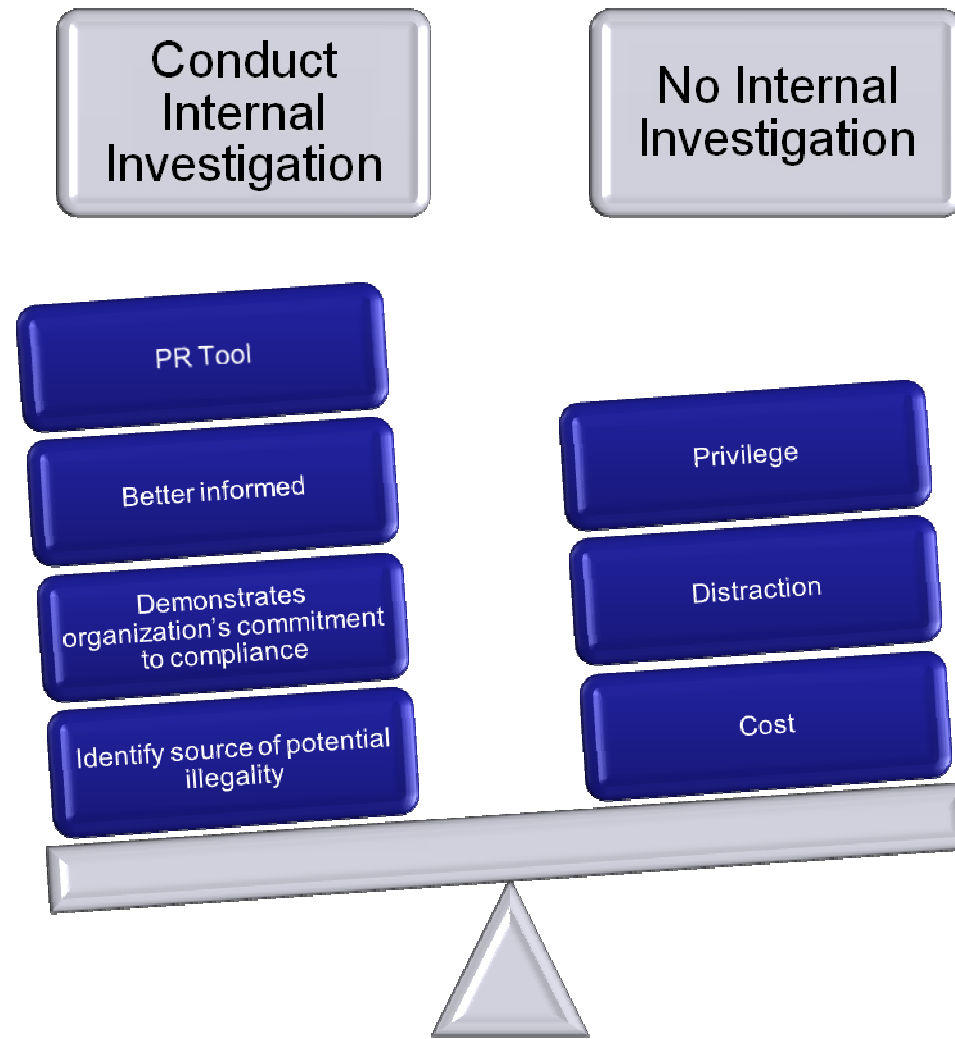


Negotiate with Government

- Negotiate the scope of the request
 - What does the Government want?
 - What does the Government need?
 - What is practical to obtain?
 - What is practical to provide?
- Format of Production
 - Paper vs. Electronic
 - E-mails
- Timing of Production
 - Rolling vs. Set Date
- Confidential and/or Privileged Documents



Internal Investigation



Employee/Officer Interviews

- Be sure document collection and fact-gathering complete before agreeing to interviews
- Conduct mock interviews to prepare employee/officer



Congressional Hearings

- Written testimony should be prepared with counsel
- Identify allies on the committee
- 18 U.S.C. §1001
- Conduct mock Q&A
- Pleading the Fifth
- **PREPARE, PREPARE, PREPARE**



Public Relations

- High profile investigations include many non-legal consequences
- Create PR strategy with organization's PR/Communications team Consider hiring outside PR firm
- PR team's basic responsibilities:
 - managing media inquiries,
 - monitoring media coverage, and
 - issuing press releases
- Integrate PR team/strategy into entire investigation



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