

# When The FBI Knocks

Practical Tips for Responding  
to an Investigation

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## When The FBI Knocks – Outline

- Practical Tips for When The Agent is at Your Door
- Stepping Back – How to Respond to an Investigation
- The Role of Outside Counsel – When and Who
- Questions?

# THE FIRST RULE



# Before The Agents Arrive

- Training and Preparation are Key to Effective Response
- Should Have Plans and Training for Agent Visit at Office – But What About Outside of Office?
- Visits to Employees' Homes are Standard Practice
- Consider Pros and Cons of Telling Employees of their Right Not to Answer Questions
- Consider Telling Employees That if They Ask For Counsel, Company Will Provide it As Matter of Policy

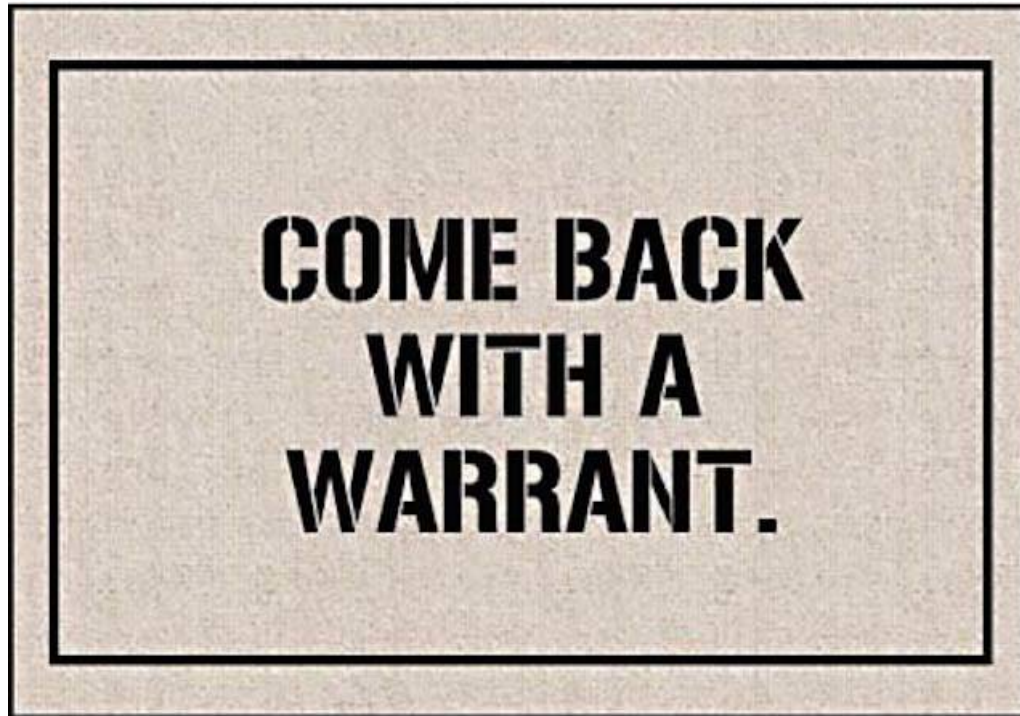
# The Arrival – What to Do

- Your Front Door Personnel Should Know to Ask for Help
  - Know Which Supervisor to Call
  - Know Whether to Call Counsel – Who and How
  - Have a Back-up Plan
- Ask for Delay While Waiting for Supervisor/Counsel
- Don't Consent or Agree to Anything

# First Steps – Warrant or Warrantless?

- Once Counsel or Supervisor Arrives, Determine Whether There is a Search Warrant or Whether Request is for Voluntary Cooperation
- Ask to See I.D. and Obtain Business Cards
- Most Requests for Voluntary Cooperation Should Be Met With a Polite “Not Now” – Obtain Contact Information and End the Visit
- If the Agents are Executing a Search Warrant, Ask for a Copy – it Will Tell You What They Are Looking for and Where

# Be Firm...But Polite







## Next Steps – Employees

- Gather Employees and Send Them Home, if Possible
- Tell Them that They May Speak to Agents, or Not. It's Their Choice
- Tell Them that if They Choose to Talk and Want a Lawyer, the Company Will Provide One
- Make Sure Before They Leave that You Will Have Access to All Files Covered by the Search
- Keep Employees Needed for the Search

# The Search – Do's and Don'ts

- Monitor the Search, But Do Not Argue or Obstruct
- Make a Record – Where They Search, What They Take, Who They Talk To
- If You Decide to Video, Do So Openly, and Comply With Instruction to Stop
- What if Agents Go Outside Warrant – Object, Don't Obstruct
- Make Your Own Inventory, Ask the Agent to Review and Sign
- If Agent's Inventory is Incomplete or Incorrect, Decline to Sign

# Special Considerations – Digital Documents and Privilege

- Imaging Servers and Drives is Easy. This Should be the Default
- If Agents Insist on Taking Servers or Drives, Try to Reach the Prosecutor and Negotiate
- If the Agents Are Taking Files, Drives, or Servers With Privileged Information, Tell Them and Ask That it Be Sealed
- If Agents Are Taking Trade Secrets or Personal Health Information, Tell Them and Ask That it Be Sealed

# Aftermath of the Search

- Be Ready With Your Legal Team and Initial Strategy
- Be Ready to Respond to Questions from Employees, Customers, and Media
- Prepare for Litigation – Document Preservation

# Responding to an Investigation

- Most Important: Do You Start an Internal Investigation?
- General Philosophy: Build Relationships and Good Will
- Push Your Message – But Don't Overreach
- Pick Your Battles Carefully
  - Do Challenge Defects in the Search Warrant
  - Do Protect Privilege – Taint Team

# Responding to An Investigation – Joint Defense Agreements

- Company Should, if Possible, Embrace Current and Former Employees
- Jettison the Obvious Bad Actors
- Recruit Counsel for Employees and Pay for Them
- Enter Into Joint Defense Agreements
- Share Intelligence with JDA Counsel on Investigation

# Responding to an Investigation Con't

- Scorched Earth Only When It's the Last Option
- Be Flexible as Details Emerge – Your Understanding of the Situation and Your Strategy Will Change
- Be Prepared for the Long Haul – Investigations Can Last Years and You May Not Know When it's Over

# How Much Justice Do You Need? When to Go Outside For Help



*"You have a pretty good case, Mr. Pitkin. How much justice can you afford?"*



ALMOST EVERY TIME

# Using Outside Counsel

- Provides a Necessary Buffer for Company and Inside Counsel
- Allows for a Scalable Response as Investigation Evolves
- Brings Additional Expertise to Strategic Decisions
- Keeps You Out of Quagmire of Detail
- Not Necessary in Only Most Innocuous Circumstances – the Simple Third-Party Subpoena

# Using Outside Counsel Con't

- May Have to Use the Big Name – But it Won't Change the Outcome
- Avoid the Person You Saw on the Courthouse Steps
- Avoid the Person Who Promises a Miracle
- Avoid the One-Gear Hard Charger
- Look for the Person With Experience and a Plan to Quickly Get Ahead of the Situation

QUESTIONS?