

# *Are you kidding me?....*

AND OTHER  
APPROPRIATE  
RESPONSES TO A  
GOVERNMENT  
INVESTIGATION





# Goals

---

1. Understand how a federal investigation will be disclosed
2. Know what to do in that moment
3. Consider ways to influence an investigation post-disclosure to your benefit

# Framework

---



1. Call



2. Calm



3. Control

# 1. Call





# Investigation's Start

---

Routine audit  
Self-reporting  
Whistleblower  
Customer  
Competitor  
Victim



# Investigation's Disclosure

---

Informal request for information

Subpoena for information

Interview

Qui tam filing

Civil Investigative Demand

Grand jury subpoena

Search warrant



# Investigation's Disclosure (con't)

---





# Activity 1

---



Health and Human Services agent arrives to serve an administrative subpoena.

FBI agent arrives to execute a search warrant.

Which corporate attorney is having the worse day?

# Questions

---



## 2. Calm



# Calming the Situation: The “Dos”

---

Be cooperative and truthful

Promptly notify outside counsel

Use counsel as a shield

Preserve all potential evidence immediately

Start identifying internal point person

# Calming the Situation: The “Do Nots”

---

Warrants and subpoenas permit gathering and production of evidence and documents -- *not* statements

Do not make statements without counsel present

Do not volunteer information

Do not obstruct justice

# Activity 2

---



You intend to accept the subpoena from Agent Townsend.

What do you do when interacting with Agent Townsend?



## Activity 2 (con't)

---



Be cooperative (accept and thank)

Inform Agent that Company and Employees are represented by counsel

Provide Agent with your and outside counsel's information

Ask Agent for her contact information

Say no more

# Questions

---



# 3. Control



# Influencing the Investigation

---

Prosecutors frown upon demands

Assistance is always welcomed

So, what are we trying to achieve?



# Influencing the Investigation (con't)

---

Assist the investigative entity in concluding...

on its own...

based upon the information available...

that no criminal, civil or administrative liability exists...

as to the company.

# How to Influence

---



Initiate and advance communications

Cut out the “middle man”

Know how prosecutors and investigators think



# Internal Investigation

---



Key to influencing an investigation

Components:

- Internal
- Immediate
- Collaborative

# Internal Investigation's Goals

---



What happened and why  
Remedial steps to be taken  
Craft the narrative

# Self-disclosure or referral

---

Mistake or wrongdoing  
identified internally (or  
externally)

Proactive and voluntary  
disclosure

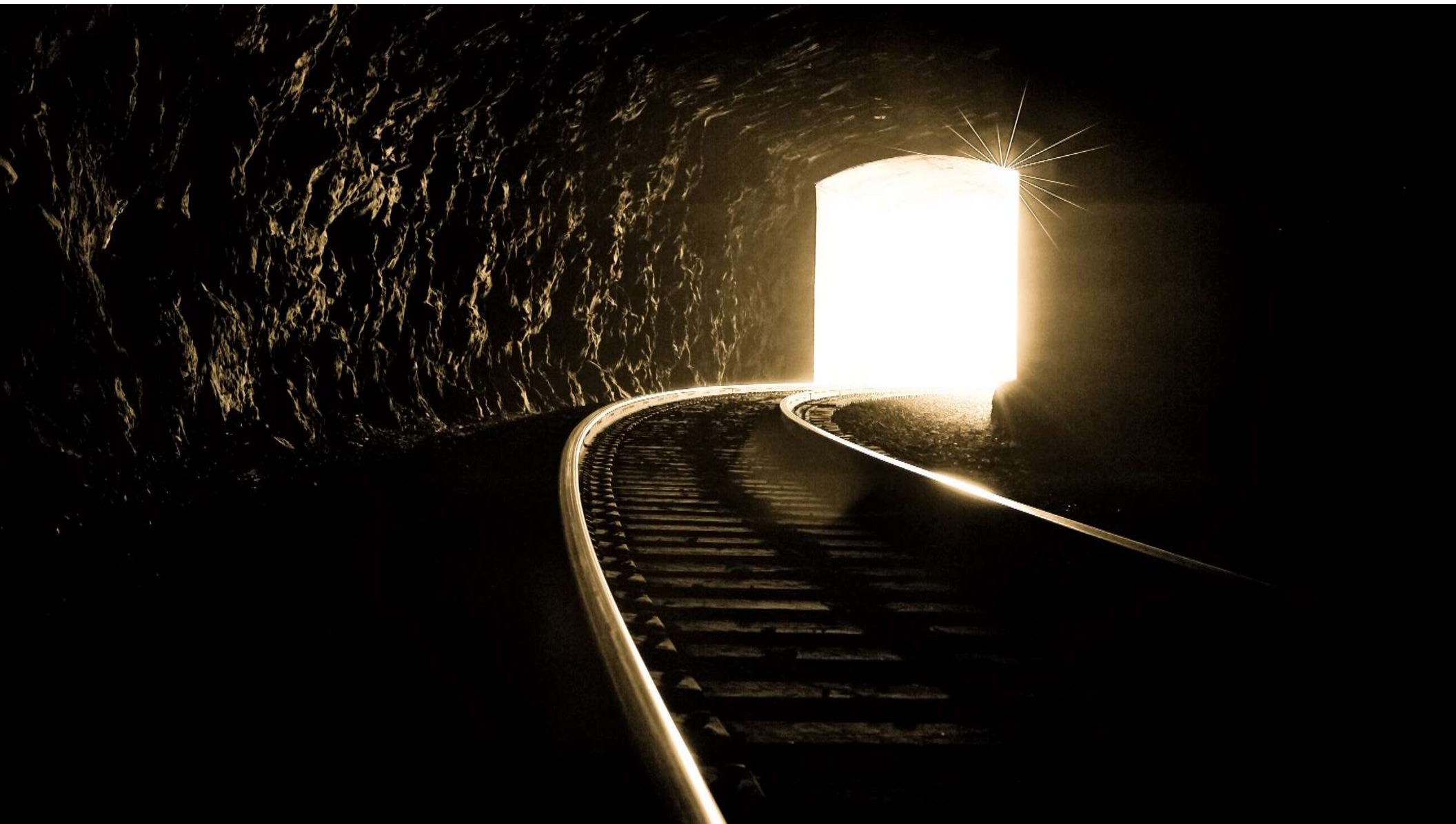
Pros and cons exist



# Questions

---





# Final Points

---

You will be the first responder when faced with an investigation.

Calm the situation with basic but critically important guidelines at inception.

Identify and utilize outside counsel to lead you throughout the process.

Best outcome traditionally achieved if you are a cooperative participant influencing and assisting an investigation.