



**PROGRAM MATERIALS**

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## **Internal Investigations - Top Tips, Strategies and Considerations**

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# Internal Investigations

## Top Tips, Strategies and Considerations

*March 23, 2021*

# Disclaimer

This presentation is for information and training purposes only and solely for the benefit of the attendees. It should not be considered legal advice and should not be relied upon for any specific legal purpose or used as a basis to undertake any legal action.



**Disclaimer**

## Wifredo A. "Willy" Ferrer



Wifredo A. "Willy" Ferrer, the former United States Attorney for the Southern District of Florida, is a Miami litigation attorney who is the Chair of Holland & Knight's Global Compliance and Investigations Team and the Executive Partner of the firm's Miami office. Mr. Ferrer focuses his practice primarily on internal corporate investigations, corporate compliance and training, and white collar criminal defense with special attention to matters arising from or connected to Latin America.

### Wilfredo A. Ferrer

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### Practice

- White Collar Defense and Investigations
- Latin America Practice
- Foreign Corrupt Practices Act
- Compliance Services
- Healthcare Fraud and Abuse
- Litigation and Dispute Resolution

### Education

- University of Pennsylvania Law School, J.D., cum laude
- University of Miami, A.B., Economics, summa cum laude

### Bar Admission

- District of Columbia
- Florida

# Biography

## Michael E. Hantman



Michael E. Hantman, a former Florida Assistant Attorney General, is a Miami litigation attorney who focuses his practice on assisting companies and individuals to investigate, respond to and defend against government scrutiny, whistleblower complaints and enforcement actions involving allegations of bribery, fraud, accounting misrepresentations, kickbacks, money laundering and other ethical lapses. .

Michael E. Hantman	Practice	Education	Bar Admission
Partner  305.789.7697 michael.hantman@hklaw.com Miami, Florida	<ul style="list-style-type: none"><li>• White Collar Defense and Investigations</li><li>• Latin America Practice</li><li>• Foreign Corrupt Practices Act</li><li>• Compliance Services</li><li>• Healthcare Fraud and Abuse</li><li>• Litigation and Dispute Resolution</li></ul>	<ul style="list-style-type: none"><li>• University of Miami School of Law, J.D., cum laude</li><li>• New College of Florida, B.A., British &amp; American Literature</li></ul>	<ul style="list-style-type: none"><li>• Florida</li></ul>

# Today's Roadmap

- » Getting Started
- » Initial Actions
- » Data Collection
- » Interviews
  - COVID-19 Considerations
- » Findings
- » Remedial Measures



# Getting Started

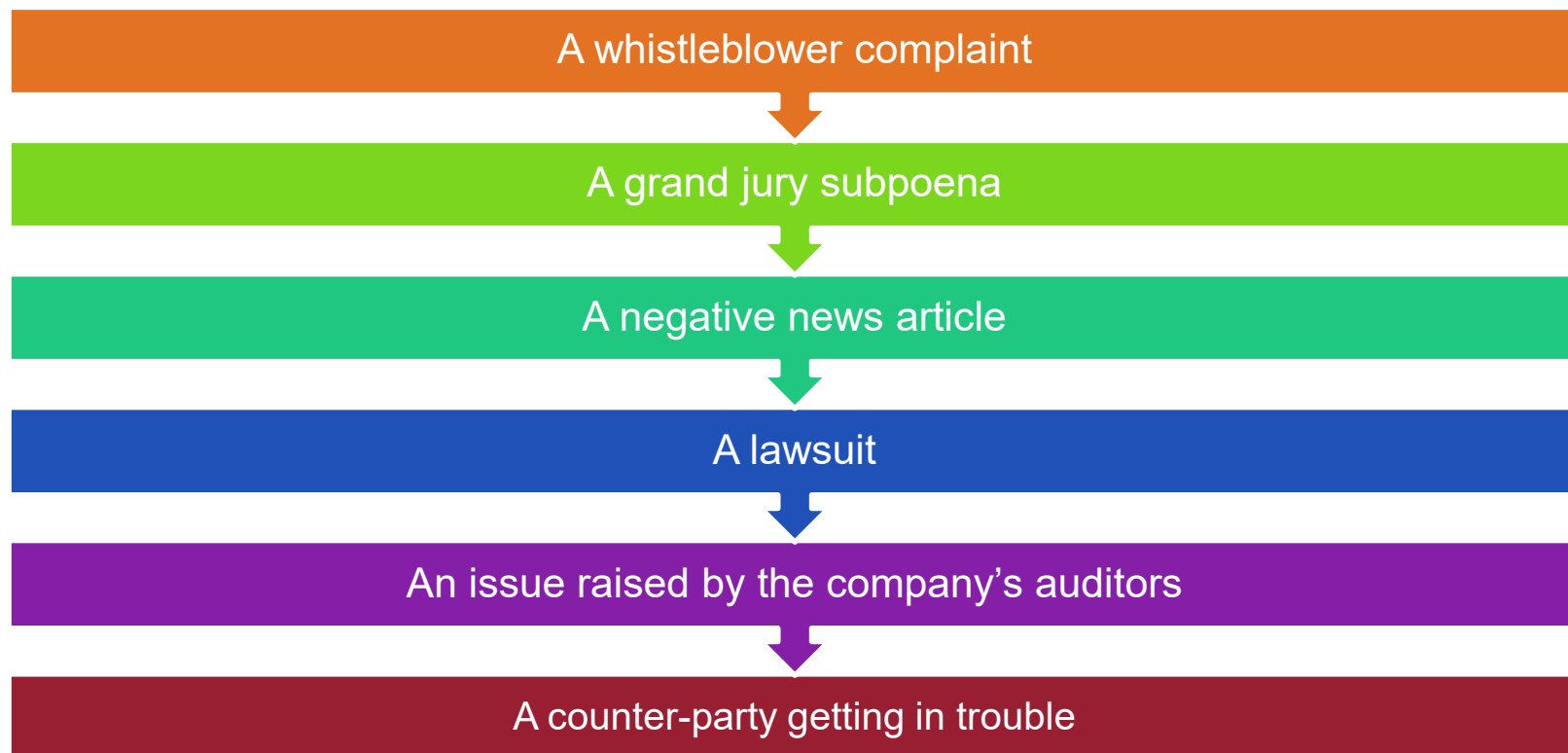
As we enter a new presidential administration where the expectation is that law enforcement and regulatory scrutiny will increase, American businesses need to be prepared. Internal investigations are key parts of corporate life today.

As the world shrinks because of global trade, telecommunications and outsourcing, the chances that problems can arise have increased as we do business in new places with different cultural norms.



# Getting Started

What triggers the need for an internal investigation?





# Getting Started

An internal investigation must start the right way – thinking through key issues and planning ahead right from the start is key to avoiding mistakes that may set the investigation back days, weeks and months.



# Getting Started

## » Who should conduct the internal investigation?

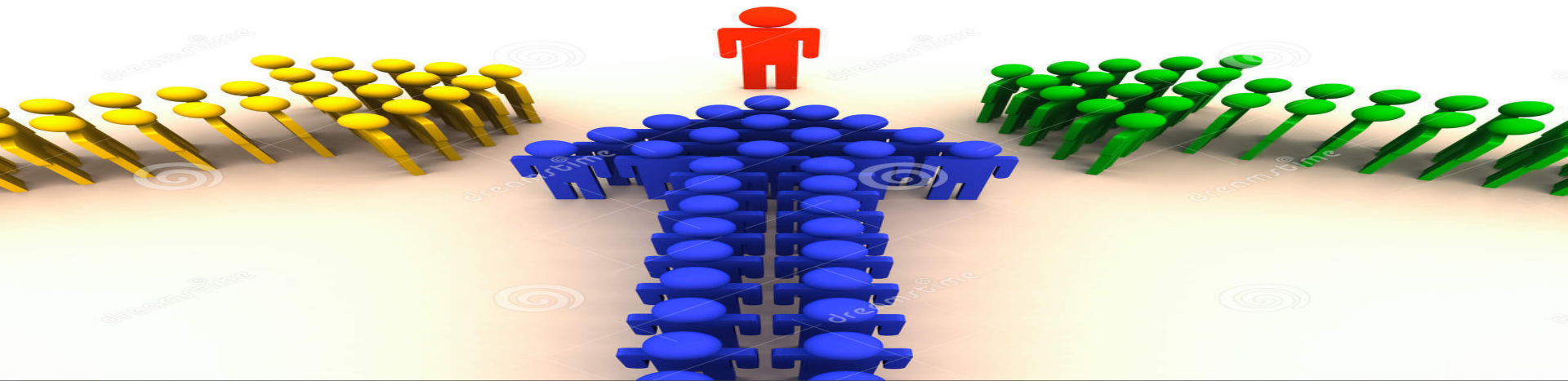
- HR department
- General counsel
- Accounting firm
- Law firm
- Private investigator
- Compliance officer



# Getting Started

## Point of Contact (assuming outside counsel is hired)

- » Determine appropriate client (i.e., Board of Directors, special Board committee, management, Audit Committee, etc.)
- » Determine appropriate point of contact
- » Obtain written request to conduct investigation to ensure that investigation is protected under attorney-client privilege and that the investigation scope is right

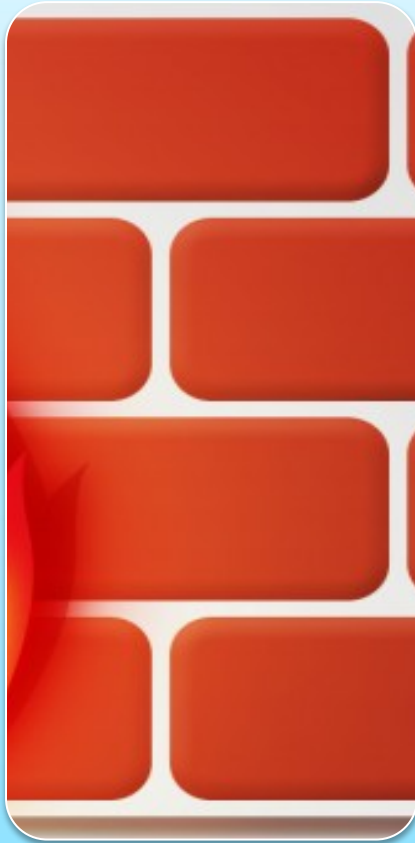


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# Firewall



- If the allegations target members of senior management, erect a firewall to avoid efforts to:
  - Destroy data
  - Pressure others
  - Terminate counsel
  - Starve the budget
  - Damage credibility of investigation
  - ??? – limited only by imagination



## **Data Preservation**

Consider imaging devices prior to issuing document preservation notice and turning off auto deletion systems

# WHISTLEBLOWER

If there's a whistleblower who is only raising concerns **for the moment** inside the company, strategize how to keep it that way.



# Data Collection



- » Determine names of key custodians and perform document collection interviews to learn where relevant data exists
- » Develop search terms to capture relevant documents
- » Create search terms
- » Develop document processing system and code all reviewed documents



# Data Collection

- » Consider if relevant jurisdictions have data privacy, blocking statutes, state secrecy or other laws that may interfere with document collection and review protocols
- » Confirm that company contracts don't have language that may interfere with document collection and review protocols





## » Issues surrounding interviews

- Give serious thought to the order of interviews
- Typically, the “target” of the investigation is interviewed last
- Assume each interview will be the last time you are able to speak to the interviewee
- Consider who should attend
- Find a venue where confidentiality can be maintained and where the interview subject will be comfortable
- Provide Upjohn warning
- Consider what actions to take if employee refuses to attend interview, isn't honest or refuses to cooperate
- Exercise caution when interviewing former employees

# Interviews

Consider options if interview subject won't cooperate or is dishonest

Consider options if you learn about retaliation

Demand letter

Report to Board

Suspension

Termination

# Interviews in the Time of COVID-19

In Person vs.  
Remote Interview:

Consider if in  
person interview is  
a need, a want or  
unnecessary

Travel  
Restrictions:

Don't rush to the  
airport prior to  
researching travel  
restrictions

# Interviews in the Time of COVID-19

## Conduct pre-interview

- Make sure interview subject:
  - Has secure internet connection
  - Has right hardware and software
  - Is in a quiet place
  - Knows how to do screen sharing

## Organize your exhibits

- Make sure you:
  - Have your exhibits clearly marked on your desktop
  - Know what is visible on your screen before clicking “share”
  - Consider if you can block subject from copying screen

# Findings

What entity or person should receive findings?

Should findings be oral, written or a hybrid?

Should findings simply lay out the facts or go further (e.g., assess credibility, provide opinions, etc.)?

Should findings be shared with third parties (e.g., auditors, law enforcement, regulators, etc.)?

# Remedial Measures

Does the company have well functioning internal controls?

Is the company's compliance and training program well designed and properly implemented?

Is the tone at the top one that emphasizes ethics and being a good corporate citizen?

What lessons can be learned from this exercise?



# Questions?

# Thank you!