

INSIGHTS

## Wearing Many Hats

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In this episode of Bracewell Sidebar, Shamoil Shipchandler joins us to look at government investigations from a prosecutor's point of view.

Shamoil is a former senior officer at the US Securities and Exchange Commission and the US Attorney's Office for the Eastern District of Texas. He is currently chief counsel of risk and regulatory affairs at Charles Schwab.

**What are the differences in criminal and civil investigations, and how does the government approach them?**

I think about them in much the same way. You're after the same kind of thing. You're after the end result as you're trying to figure out what went wrong. What went wrong can be criminal. What went wrong can be civil. Sometimes what went wrong can be both. A lot of the mechanisms are going to be relatively the same. But at the end of the day, I think the biggest difference would be that a criminal sanction is much more severe. It is the true hammer in the system, whereas the civil sanctions have a lot more flexibility in the resolution.

Then there are investigations initiated by the government. All too often you have internal investigations that turn into government investigations as well. When you're talking about complexity, you've got complexity in all manner of different approaches.

**What are some common mistakes you see happening over and over again in white-collar investigations?**

When you're operating as a prosecutor, you're looking at things from the government's perspective. One of the key things in the interface between the private sector and the public sector is that the government initiates an investigation, and they don't know anything. The reality is that they're getting sources of information that funnel into whatever they're trying to do, but they don't have any idea. All of their requests for information at the front end are going to be necessarily broad. When you don't have any grounding, you have to figure out what it is that you're looking for. I think initially from the government standpoint, it's really helpful when people stand up and say, "Let me help you shape your investigation. I understand what you're after."

These are the kinds of things that would help advance the ball, and in order to do that, building that trusted relationship and remembering that, yes, it's an adversarial proceeding, but it doesn't have to be instantly antagonistic.

On the other hand, on the company side it's important to marshal your resources together to answer the questions systemically and quickly, while balancing the idea that you're trying to execute business and continue to do the things that keep the company operational. I think the perspectives are different, but really it comes down to this idea of sort of scope and answering questions.

**At what point should one consider calling an outside lawyer and bringing them in because of some aspect of the case?**

When it appears at an internal investigation it's either going to have the appearance that it's not an independent investigation, or there's sufficient indications that there's something significant there that you need an independent view, that's probably where you refer to outside counsel. For example, when I think about if you've got individuals in management who have been identified as individuals who may have information, that might suggest that you have outside counsel conduct interviews, or look at information because the topic would be incredibly sensitive. Those are the kinds of issues that you think might need self-report to the government. You know that the question the government is going to ask is whether or not there was an independent investigation.

If you were able to foresee down that path, then you may know you need to get counsel involved. In many ways, it's really looking at the investigation itself and considering if this is an investigation that could use a truly independent viewpoint, and be able to execute from there. And many times, the legal department *is* an independent viewpoint, but there are circumstances where it might not be perceived as such.

Interested in learning more about government investigations? Reach out to [Matthew Nielsen](#).

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