

Commandment #6: Don't Talk to Law Enforcement- Maybe, Maybe Not

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09.19.2019

In a previous Commandment, I referenced the labels “target,” “subject” and “witness” of an investigation and pointed out that these words have significance in criminal investigations. The “target” is the one with the bull’s eye on his/her back; a “subject” may or may not end up with the bull’s eye on his/her back; and a “witness” may eventually end up being the bull’s eye. A “witness” may not appear to have criminal or regulatory legal exposure, but the investigator may believe the person may have knowledge important to the investigation. The bottom line is the labels are interchangeable: even a witness may become a subject, and a subject may eventually become a target. So deciding whether to talk to a law enforcement officer who arrives at your front door can be **TRICKY...** and a significant and life-changing decision.

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The decision to talk to law enforcement at the outset is one of the most important decisions a target, witness, or subject can make and may be irreversible. Again, even a witness may rise to the level of subject and a subject may turn into a target by the end of an investigation. And the law enforcement officer, unlike the Federal Prosecutor, has no duty to tell the person whether they are a target, subject or witness. Some are willing to identify the person’s status; others aren’t. The statements made in that very first meeting with the investigator can make all the difference later in the case. A statement that might seem innocuous at the time could have severe and adverse consequences. Some cases have already been fully investigated and officers are looking for a confession or finding the one missing fact or “smoking gun” that will be the “last nail in the coffin” of the investigation. Also, a law enforcement officer may interpret a statement far different from the intended meaning.

Every citizen has the right to talk with an attorney and the right against self-incrimination. In many instances, the person is much better off asserting his or her Constitutional rights at the outset.

I will never forget the time (over thirty years ago) I heard a Federal Investigator laughingly comment that he oftentimes started the interrogation of a target with, "I'm here from the Government, I'm here to help you." That's not necessarily the case. The investigator is there to collect evidence and determine if a crime or regulatory violation has been committed. It's a difficult decision on whether to talk to law enforcement and there may be times when it is perfectly appropriate, especially when there is no doubt a person is the victim of a crime. **However, an executive or corporate official must understand a law enforcement officer is performing a duty which may be adverse to the company's or the executive's best interests.** And an investigator may misunderstand a statement or recall a very different version of what was discussed a year or two later.

For those reasons, and in most circumstances, you should consider asserting your right to talk to an attorney before further conversations are held with an investigator. Seasoned investigators know that corporate executives deal with attorneys all the time and that a smart executive will gather as many facts as possible before making a decision on something that impacts the company or the executive. Talking to an investigator without being fully informed is a poor decision. Take the time to ask the investigator about the purpose of the visit. Be polite but firm that you prefer to first consult with an attorney who understands the investigatory process before deciding whether to answer any questions. A true professional will understand those are your constitutional rights and you are entitled to assert them.

Next Week: Commandment #7: Don't talk to the media- maybe, maybe not

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