

When the Government Comes Knocking – A Conversation With Jeff Vaden

Podcast | The Bracewell Sidebar

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On this episode of The Bracewell Sidebar, we talk with their partner [Jeff Vaden](#) about the world of white-collar criminal defense. They look at the different components of an open criminal investigation, how to handle it and, more importantly, how you can prepare.

Jeff is a partner in Bracewell's Houston office and a former federal prosecutor who investigated and prosecuted cases involving bank fraud, public corruption, export controls, sanctions, counterterrorism and national security.

What if someone approaches and says “Hi. I’m from the government and I’m here to take a look around.” What happens next?

First and foremost, you have to understand that when federal agents are there to serve a search warrant or execute a search warrant, it's not a choice. They have the right to be there pursuant to a judicial order, and they're going to go in and look for whatever the scope of the warrant is.

If you have some sense that you or your company may be under investigation, you could probably take some steps to reach out to the authorities to try to short circuit a search warrant. There is some training you can do for your employees to understand what is the most appropriate way to respond to a search warrant, how to interact with the agents, what you should and shouldn't do.

And frankly, it should be something that should be done in advance, so that you don't do something at the time that agents are present that could be interpreted as obstruction or some type of consciousness of guilt.

Can you tell us a little bit about what “obstruction” looks like and why that’s a bad idea?

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In any area of expertise, people develop a sense of what they think is how it should go. Federal agents are not any different. So, an agent walking into a situation where they already believe or they've demonstrated that they have probable cause that a crime has occurred or is occurring, they're going to walk into that situation a little bit cynical that there are going to be bad things there or bad people there, and that's where their mind's at. So, if while the agents are there, you, for example, tell your fellow coworkers or your employees, "You know you don't have to speak to the agents — which is entirely true — saying that in front of the agents is going to be perceived as you trying to obstruct their investigation."

Generally speaking in those situations, what should someone do if the government shows up without a search warrant?

Ideally they should say, "Well, I would love to speak with you, but I think I need to confer with my attorney and then we can come back to you and talk." They're not there without a reason, and agents are trained to develop a rapport and get information from people. I tell clients and potential clients all the time that if you lie to a federal agent, it's a federal felony. If they lie to you, it's good police work.

When someone says or identifies to an agent that they are represented, what should they expect?

If you tell them you're represented by counsel, they're probably going to give you their business card and say, "Either give us a call or have your lawyer give us a call so we can continue that conversation." Many times they may try to push the issue. But most of the time, particularly on the federal side, they understand they're a little bit more sophisticated generally than some of the state and local officers. They're going to take it as a signal that they're going to have to continue this conversation later or come back with a subpoena and/or a search warrant if they want to really get into that premises.

Has anyone ever seen talking to the agent for three hours actually go well for someone?

That's a rare occurrence. Typically, if they're at your doorstep, they're there for a reason. Maybe you're a witness in an investigation and if you talk to them. Maybe you never move beyond being a witness, but you've committed to a story that they're going to have documented.

In the situation when you have a search warrant, what should someone do?

Well, hopefully if it's a company, particularly one of any size, you've prepared for this day that you hope never, never comes. One thing you should always do is have a designated point of contact, whether it's someone from legal or compliance or the front desk, to interact with the agents. You want to ask to see a copy of the search warrant, which they're going to give you. They don't give

you the affidavit in support of the search warrant at that point which has all the juicy tidbits of stuff you really want to know.

You obviously want to ask for the case agent or case agents' names and business cards because that's something your lawyer's going to need to be able to reach out to them and/or the prosecutor that's assigned to the matter. Keep in mind, if there's a search warrant that the agents have, there's a prosecutor at least preliminarily assigned to that matter. And if you're really sophisticated, you should ask for that person's name because you want to get that information to your counsel so he or she could start reaching out to the government, and start that conversation that will open that line of communication even while the agents are still there on site.

Let's say that a company is somewhat aware that there's an investigation going on and thinks that there could be a situation where there's a search warrant that's forthcoming. Is there anything that they can and should do to prepare for it?

If there's a sense that there is an active investigation of your company and you don't lawyer-up so to speak, shame on you. I've had that happen to a couple of folks that I've represented. But I think you can get in front of a lot of it if you try to conduct some type of internal investigation to figure out what the problem is or where it is. And if you can do that, it doesn't harm you to reach out to the government and say, "Hey, we get the sense that we may have an issue here. Let's talk about it."

As priorities change and resources are reallocated, what jumps out to you about the law enforcement approach for information gathering that we may see play out a little bit differently than what we've seen over the last few years?

I think we're going to see a more active enforcement environment on the white-collar front for a couple of reasons, or maybe more. Democratic administrations tend to be a little bit more enforcement-aggressive, vis-à-vis corporations and corporate entities of financial institutions.

Want to learn about responding to a government investigation or Bracewell's government enforcement and investigations practice? Email [Jeff Vaden](#) or [Matthew Nielsen](#).

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