SAN DIEGO CHAPTER

AUDITORS UNCOVERING CRIMINAL ACTS

THE REAL BURDEN OF PROOF

OR DBPP V1.0
Who is This Guy?

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Current Assignment:
- San Diego Regional Fraud Task Force
- United States Secret Service Sponsored Task Force
- CATCH Team
- San Diego District Attorney’s Office Sponsored Task Force

Computer and Technology Crime High Tech Response Team
What’s He Selling?

Efficiency and/or Effectiveness (I Hope)
Preponderance
Vs.
Beyond a Reasonable Doubt
Burden of Proof, cont.

- Preponderance – Over 50%
  - “Civil” Investigations
  - Internal Investigations
    - EEO Investigations
    - Internal Affairs
    - Audits
Beyond a Reasonable Doubt

“If the jurors or judge have no doubt as to the defendant's guilt, or if their only doubts are unreasonable doubts, then the prosecutor has proven the defendant's guilt beyond a reasonable doubt and the defendant should be pronounced guilty.”¹

Trier of Fact may vary findings depending on the severity of the crime or potential punishment

¹ The Free Dictionary, Available at: http://legal-dictionary.thefreedictionary.com/Beyond+a+Reasonable+Doubt
But They’re Guilty!!!!

Several Steps to Successful Criminal Prosecution
- Victim Discovery
- Victim Reporting
- Sufficient Evidence
- Within Statue of Limitations
- Significant Loss
- Successful Law Enforcement Investigation (13%)
- Prosecutor Desire to Prosecute
  - Jury Appeal - Understandable Evidence to 12 Laypersons
- Jury Agrees with Prosecutor’s Version of Events

Now They’re Guilty!
Case Triage / Review / Acceptance

- **Stop the Bleeding**
  - Financial Bleeding in my Current Assignment

- **Victim Loss**
  - Real Loss
    - Recovered Loss
    - Amount of Loss

- **Jurisdiction**
  - Where is the Suspect
    - Nigeria just does not work for us
• **Statute of Limitations**
  ○ Starts when Victim Discovered, or *Reasonably Should Have Discovered*, Crime.
  ○ May Also Start if Law Enforcement Notified
    ▸ Lesser crime reported, later determined to be significant
    ▸ Would a subsequent investigation have discovered the crime sooner?
  ○ Generally Four Years for Felonies
  ○ One Year of Misdemeanors
    ▸ City Attorney
City Attorney

- Generally Can Only Prosecute Misdemeanor Crimes
  - Up to a $1,000 fine and up to one year in jail
  - California Penal Code § 17(b)(4)
Case Triage / Review / Acceptance, cont.

- **Victim Actions**
  - Door *Knowingly* Left Unlocked?
    - e.g. Victim hired a known felon to be their CPA
      - Did not complete much or any due diligence
  - Organization Does Not Have Policies on Use of Funds
    - e.g. Policy / Procedure for use of company credit card
  - Victim Compounded the Crime
Compounding or Concealing a Crime

- **California Penal Code § 153**
  - Every person who, having knowledge of the actual commission of a crime, takes money or property of another, or any gratuity or reward, or any engagement, or promise thereof, upon any agreement or understanding to compound or conceal that crime, or to abstain from any prosecution thereof, or to withhold any evidence thereof, except in the cases provided for by law, in which crimes may be compromised by leave of court, is punishable by....

- **How was it compounded?**
  - Verbal
  - Suspect Initiated
  - Formal Documented Agreement by Attorney
Case Triage / Review / Acceptance, cont.

- **Victim Selectively Reporting Criminal Acts**
  - e.g. Both Martha and Jerry stole from the business, but I am only reporting Martha

- **Victim Failure to Give Access to ALL Evidence**
  - Victim requirement for law enforcement to seek a search warrant or subpoena for victim records - *not going to happen*
  - Victim not advising of known relationships
    - e.g. I (CEO, CFO, Owner, etc.) had a relationship with the suspect

- **Victimization**
  - Mom & Pop vs. Billionaire
Tacit Approval of Wrongdoing

- They Stole “Too Much”
  - Theft Loss Reached an Arbitrary Threshold
    - e.g. Less than $5,000 Employee is Fired. Over $5,000 and Law Enforcement is Contacted

- Theft Could be Construed as Expected Part of Compensation
  - Toll Road – Visible Police Car

- Business / Owner Knew of Theft
  - Delayed Reporting for Business Benefit – See Compounding
Victim Goals / Concerns

- Public Arrest – In View of All Employees
  - Isn’t that Punishment?
  - Completed Investigation to Prosecutor in Three Days for all In-Custody Arrests
Victim Goals / Concerns, cont.

- **Public Knowledge of Theft**
  - Public Company Stock Holders
    - Stock Price
  - Private Company Owners
    - Removal of Management
  - Non-Profit Organizations
    - Wrath of Donors
    - Decrease in Donations
  - Governments
    - Political Impact
Victim Goals / Concerns, cont.

- **Penalty to Suspect**
  - Sentencing after Conviction
  - Jail / Prison Term
  - Restitution
    - May Change to Judicial Judgment After Sentence is Complete
  - Asset Forfeiture
  - Probation / Parole
    - Waiver of Fourth Amendment Rights

- **Precedent or Concurrent Civil Actions**
  - Attorney Recommendations to Involve Law Enforcement
  - Compelled Statements in Civil Actions (usually in Deposition)
Recommendations

- Keep Law Enforcement in Mind When You Come Across Fraud / Theft
  (Statue of Limitation, Need to Admissible Collect Evidence, etc.)
- Seek Out An *Experienced* Investigator
- Do Not Act as a “Government Agent”
  - Do Not Advise / Read People a Miranda Warning
- Do Not Use Law Enforcement Intervention as a Threat
- Do Not Expect Law Enforcement to Make a Public Arrest
Recommendations, cont.

- **Interview as Many People as Possible, Prior to Law Enforcement Becoming Involved**
  - Tape Record Interviews, if Possible
    - Notify ALL Parties the Conversation is Recorded
    - (California Penal Code § 632)

- **Encourage Company Management to:**
  - Consider Employee Termination Based on Internal Findings (e.g. Do Not Wait for Law Enforcement Criminal Findings)
    - Or Consider a non-Disciplinary Suspension With or Without Pay

- **Provide Trueful References to the Employee’s Potential New (Subsequent) Employer**
  - Do NOT Give a Favorable Reference to End Employment
Recommendations, cont.

- Encourage Employees to Learn Each Others’ Job
  - Reduces the Chances of Someone Becoming Indispensable
  - May Reduce the Crisis Mindset if Someone is Not Available
  - Somewhat Prevents People Working in Silos
- Segregate Duties, Particularly in Financial Positions
  - Accounts Payable vs. Accounts Receivable
  - Receiving Mail
- Trust, But Verify
  - You May Have Hired the World’s Best Employee, But Find a Way to Measure This Success
- Forced Vacations or Transfers
  - Even if Only Temporary
Recommendations, cont.

- **Know Your Business**
  - Know How it Works (Internal & External Processes)
  - Know When it is Not Working
  - Ask Your Employee Questions
  - Know How Your Organization Measures Success
    - Be Willing to Seek Other (non-standard) Metrics as Verification
QUESTIONS?
Where’d He Go?

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