

How to Recognize a Government Investigation

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Spot the criminal exposure before it's too late.

While criminal law is getting more complex, with landmines for the unwary lurking everywhere, defenses to crimes seem to have gotten simpler. Today, there are only two real defenses in a criminal case: “I didn’t do it” and “It didn’t happen that way.” While the burden of proof is high in a criminal case — beyond a reasonable doubt — prosecutors can easily meet that standard when the defendant previously admitted to the crime or the bad conduct in a deposition or in an interview. Civil lawyers many times simply do not see or comprehend a client’s criminal exposure in a civil case until it is too late. Indeed, the risks for civil lawyers abound when their clients also have criminal problems. Civil lawyers should learn to spot the issues and the risk to the client, and promptly involve competent counsel to avoid a later professional liability claim. Sometimes, advising a client to seek a continuance of a deposition, or to invoke the Fifth Amendment right to remain silent, or to refuse to participate in an informal interview with the government, could be the difference between the client’s freedom and his going to jail. This article, published in the October 2012 issue of *The Practical Lawyer*, will provide some background about where civil and criminal law overlap and how civil practitioners can spot red flags.

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