



## **Corporations Under Fire: 10 Tips for Investigations in the New Era of Enforcement from ACC Northeast**

**Litigation and Dispute Resolution**

**Corporate, Securities, and Governance**



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In a recent ACC discussion, a panel of experienced legal professionals — Samuel Rosenberg, GC at Atlas Crane Service LLC, and partners Ryan DiSantis and Allison O’Neil of Troutman Pepper Locke LLP — provided a comprehensive overview of how to conduct effective internal investigations. Here are 10 key takeaways from their discussion.

*This panel took place June 3, 2025. Watch the full discussion via the [on-demand recording](#).*

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In today's complex regulatory landscape, internal investigations are a critical function for companies facing legal, compliance, or ethical issues. Whether prompted by government inquiries, whistleblower complaints, or internal red flags, investigations must be executed with diligence, fairness, and strategic foresight.

## **1. Establishing the purpose and goals of the investigation**

Before launching into the fact-finding phase, it's essential to define the goals of the investigation. These typically include:

- Understanding what happened;
- Conducting the process fairly, confidently, and credibly;
- Protecting legal privileges;
- Identifying and addressing any wrongdoing; and

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- Learning lessons to improve company practices.

Investigators must maintain fairness toward all individuals involved — especially whistleblowers and those under scrutiny — and ensure that privilege is preserved by restricting access to sensitive information. If wrongdoing is found, it should be addressed promptly, though legal nuance is critical, especially if allegations are contested or tied to ongoing government concerns.

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## 2. Scope, strategy, and timeline

Investigations vary in scope based on several factors:

- The subject matter;
- The company's role (witness, subject, or target);
- The business area involved; and
- Any external timelines (e.g., disclosure obligations, employment decisions, media pressure).

While thoroughness is critical, balancing it with efficiency is essential. Investigators should:

- Identify relevant documents and custodians early;
- Establish a timeline, but remain flexible; and
- Make strategic decisions on whom to interview and what materials to prioritize.

## 3. Proactive vs. reactive investigations

While many investigations begin in response to a government inquiry, some originate from internal complaints — particularly in areas like the Foreign Corrupt Practices Act (FCPA). Companies should be alert to industry chatter, internal reports, or potential high-risk areas.

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Being proactive can be particularly advantageous. In some cases, timely internal investigations allow companies to:

- Address concerns before they escalate;
- Correct practices; and
- Shape the narrative with regulators.

## **4. Document preservation and modern communication challenges**

Preserving relevant documents is a critical step. In today's environment, this includes:

- Email and hard documents,
- Zoom recordings,
- Slack messages,
- Mobile phone communications, and
- AI-generated meeting notes.

A common mistake is failing to update the litigation hold as new custodians are identified. Communication with those under investigation should reinforce that the company is taking the matter seriously, especially with complainants.

Additionally, companies should consider engaging PR, crisis communications teams, or media consultants early — while understanding that conversations with them are *not privileged*.



## KEYNOTE SPEAKERS



ANDREW ROSS SORKIN  
Award-Winning Journalist  
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Master Storyteller



NICOLE LYNN  
Trailblazing NFL Agent & Attorney  
Author of *Agent You*

&

MONDAY, OCTOBER 20

TUESDAY, OCTOBER 21

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## 5. Witness interviews: Preparation and execution

Witness interviews must be handled with care. Best practices include:

- Planning the interview order strategically;
- Considering interpersonal dynamics among employees;
- Choosing the right interview setting (in-person vs. Zoom);
- Using subject matter experts when necessary;
- Providing Upjohn warnings to maintain privilege; and
- Being mindful of tone and confidentiality.

Investigators should also set up clear points of contact for questions or follow-ups and consider anonymous hotlines for additional reporting.

## 6. Maintaining privilege and avoiding retaliation

Privilege must be preserved throughout the investigation. This includes:

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- Clear communication of Upjohn warnings in all interviews;

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- Educating the internal control group on confidentiality;
- Restricting privileged disclosures to a need-to-know group; and
- Avoiding retaliation against whistleblowers or complainants.

Additionally, conflict checks should be conducted early to determine whether separate counsel is needed for individuals with potential legal exposure.

## **7. Former employees and government outreach**

Former employees often hold critical information, and the government may reach out to them before the company is even aware. It is essential to:

- Identify and proactively contact relevant former employees;
- Offer legal counsel when appropriate; and
- Engage them before the government does to protect privilege and obtain information.

## **8. Wrapping up: Reports, remediation, and lessons learned**

At the conclusion of an investigation:

- Consider whether to deliver findings orally or in writing (written reports are less common due to legal exposure).
- Implement remedial measures where misconduct occurred.
- Conduct a lessons-learned review to improve policies and procedures.
- Set expectations for internal communication and closure.

“Putting a bow on it,” as the Rosenberg described, ensures the issue doesn’t fester or resurface later.

## **9. Navigating government interactions**

When the government becomes involved — whether through a subpoena, or more aggressive actions — companies must tread carefully.

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Key considerations include:

- Whether to present findings proactively to the government;
- Assessing if voluntary disclosure is advantageous under the current administration;
- Strategically evaluating the risk of waiving privilege;
- Preparing witnesses for potential testimony, depositions, or informal interviews; and
- Determining whether cooperation (e.g., proffer immunity) makes strategic sense.

In some cases, early disclosure to the US Department of Justice may lead to more favorable outcomes, especially in a regulatory climate where certain enforcement priorities (e.g., FCPA) have shifted.

## **10. Emergency scenarios: Door knocks and search warrants**

Government agents knocking on employees' doors or serving a search warrant can be highly disruptive. Companies must prepare by:

- Training employees on what to do if approached by law enforcement;
- Instructing them to refer agents to legal counsel without obstructing;
- Engaging outside counsel immediately during a search; and
- Ensuring no substantive conversations occur during the execution of a warrant.

Proactive education and training on these scenarios can prevent missteps.

## **A culture of readiness**

Internal investigations, especially those involving potential regulatory exposure, are not just legal processes — they're reputational and operational touchpoints. Companies must:

- Act swiftly;
- Think strategically;
- Communicate carefully;
- Document thoroughly; and

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- Learn and adapt continuously.

Whether you're conducting a small employment-related review or navigating a multinational bribery allegation, the fundamentals of fairness, confidentiality, and privilege remain paramount.

As DiSantis put it, "The PR aspect of an investigation can often be worse than the investigation itself." For that reason, preparation, discretion, and experience are your best tools.

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