

# CRIMINAL INVESTIGATIONS, LITIGATION, AND ENFORCEMENT PANEL

Preparing for and Responding to Criminal Investigations

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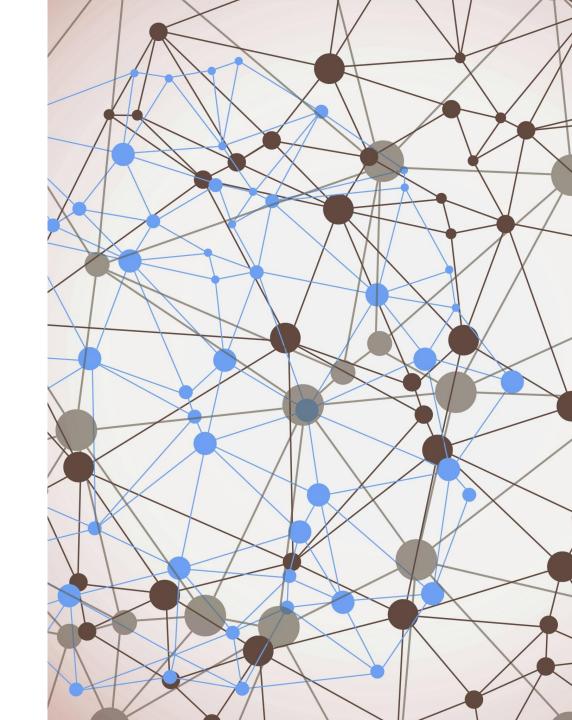
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- Trial attorney with a focus on white-collar criminal defense and eDiscovery.
- Represents both corporate and individual clients facing compliance violations and criminal charges across a wide array of industries, including environmental investigations.
- Conducts internal investigations for major corporations and within higher education.
- Coordinates responses to grand jury subpoenas and counsels witnesses and targeted individuals.

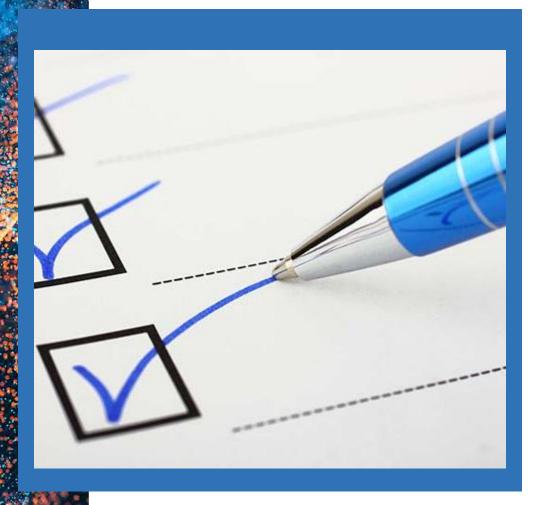
### Agenda

- 1. Advantages of planning ahead.
- 2. Efficient and cost-effective document request responses.
- 3. Witness preparation.
- 4. Considerations for prosecution of corporations + individuals.



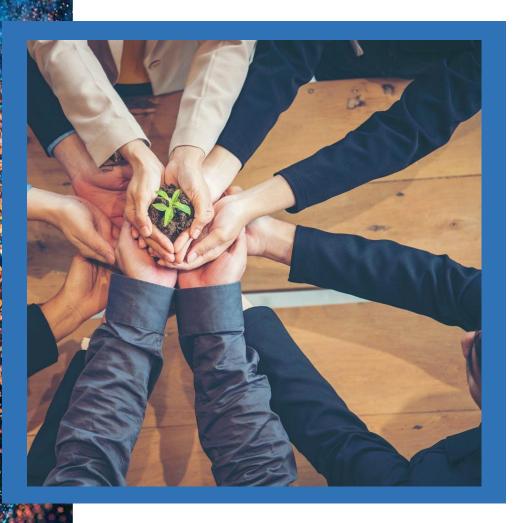


# PLAN AHEAD Your Best Defense Starts Now



#### Do You Have a Crisis Plan?

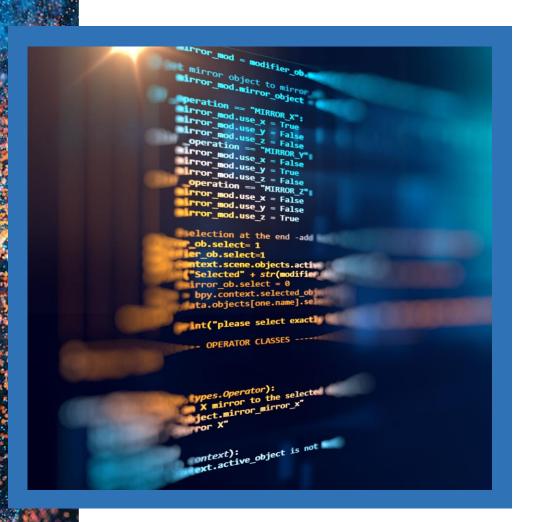
- Have a search warrant and subpoena plan:
  - Who do you call? What do you do? What don't you do?
- Make it a living document.
- Train for it regularly.
- Train EVERYONE for it regularly.



## **Assemble a Core Crisis Team**

- Decisions makers at your organization
- Outside experts:
  - Attorney
  - Accountant
  - Communications
  - Environmental/Engineering
- Insurance
- Security

## Efficient and Cost-effective Subpoena Responses



#### **Document Requests**

- Grand jury subpoena
- State criminal investigative subpoena
- Agency information requests (e.g., § 104(e), § 114)
- Civil litigation: Interrogatories/RFPs
- FOIA requests (for agencies)

#### The Rising Cost of Discovery

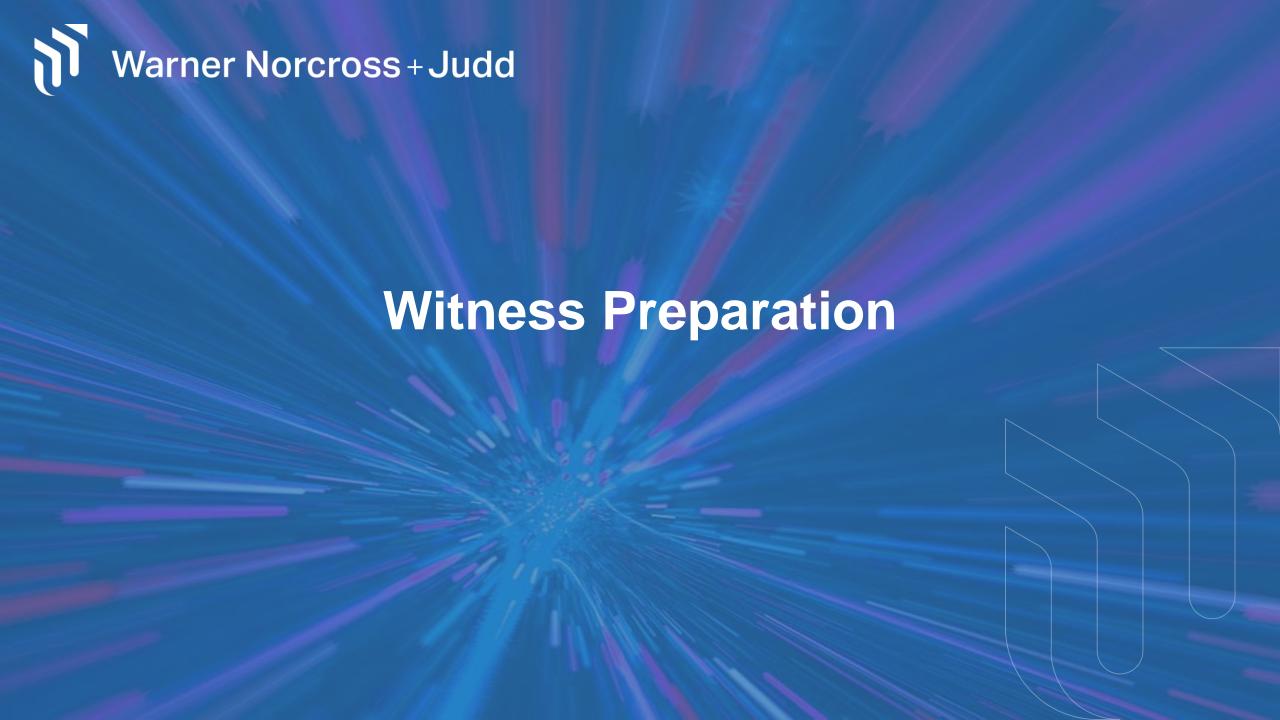
- Largest cost driver in litigation:
  - 1GB = 75,000 pages (37.5 bankers boxes)
  - Approx. 18,750 documents
  - \$18,750 (if \$50/hr and if review 50 docs/hr)
  - iPhone (256GB) costs \$4.8 million to review document-by-document
- Sources of data proliferating.



#### **Know Your Options**

- Early case strategy
- Discovery Counsel: What it is and why you need it
- AI (Technology Assisted Review)
- Reviewers
- Vendors





#### **Best Practices for Witness Preparation**

- Privilege considerations:
  - Who is the client?
  - *Upjohn* warnings
  - When to hire separate counsel
- Know your facts:
  - Review the documents
  - Internal investigation
- Practice, practice, practice
- Communications plan

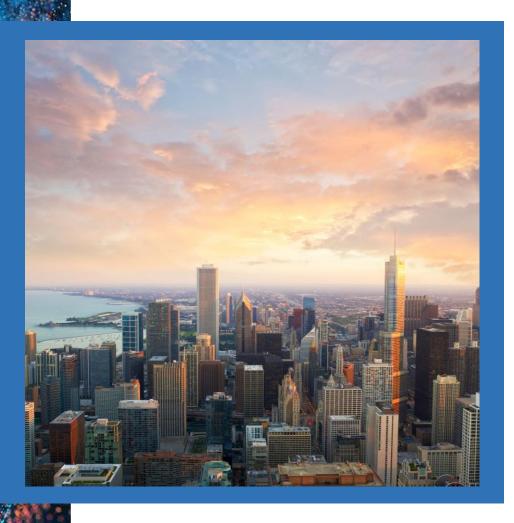


# Prosecution Considerations Corporate + Individual Defendants



#### **Federal Prosecutions**

- EPA/DOJ Criminal Priorities:
  - Environmental justice
- Individual accountability remains DOJ's primary focus:
  - Directors, officers, employees
- Corporations will be prosecuted when circumstances warrant:
  - Timely, thorough voluntary disclosure
  - History of misconduct? Repeat offender?
  - Culture of compliance?
- Hire counsel and experts early.
- Review your compliance program regularly and follow.



#### **State Prosecutions**

- Individuals are the most likely defendants
- Attorney General Nessel's priorities
  - Environmental Justice
    - Drinking water
  - Clean air + clean water
    - PFAS
    - Nuisance odors
    - Asbestos
  - Protecting environment
    - Oil spills
- Don't forget the DNR



### Questions?

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