

Behind the Mask

The Agenda, Tricks, and Tactics
of the Federal Trade Commission
as they Regulate Cybersecurity

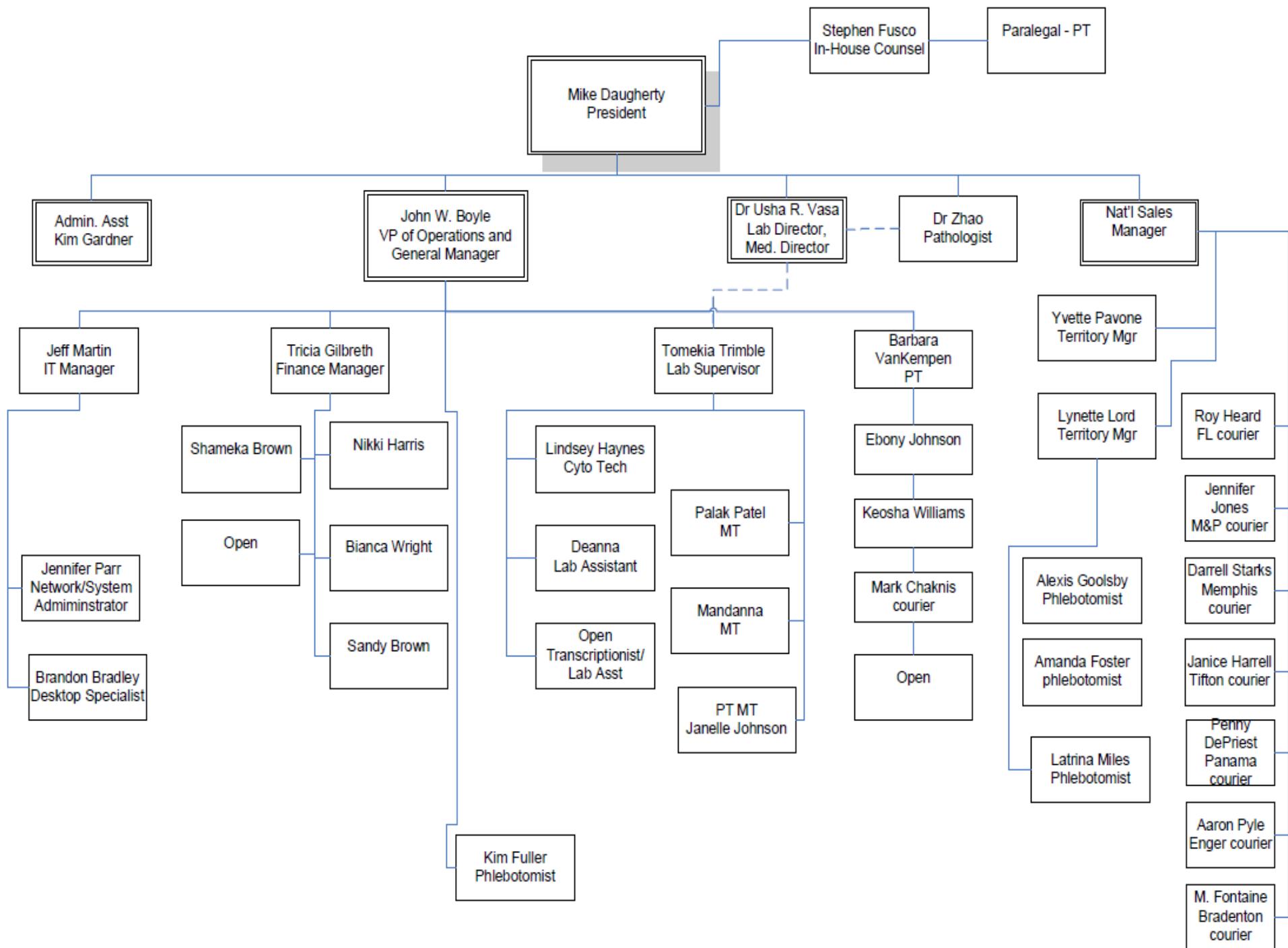


Who is
Mike Daugherty
and LabMD?



**I ALWAYS CARRY A LITTLE
CRAZY WITH ME... YOU NEVER
KNOW WHEN IT'S GOING TO
COME IN HANDY.**







Clang the Warning Bell

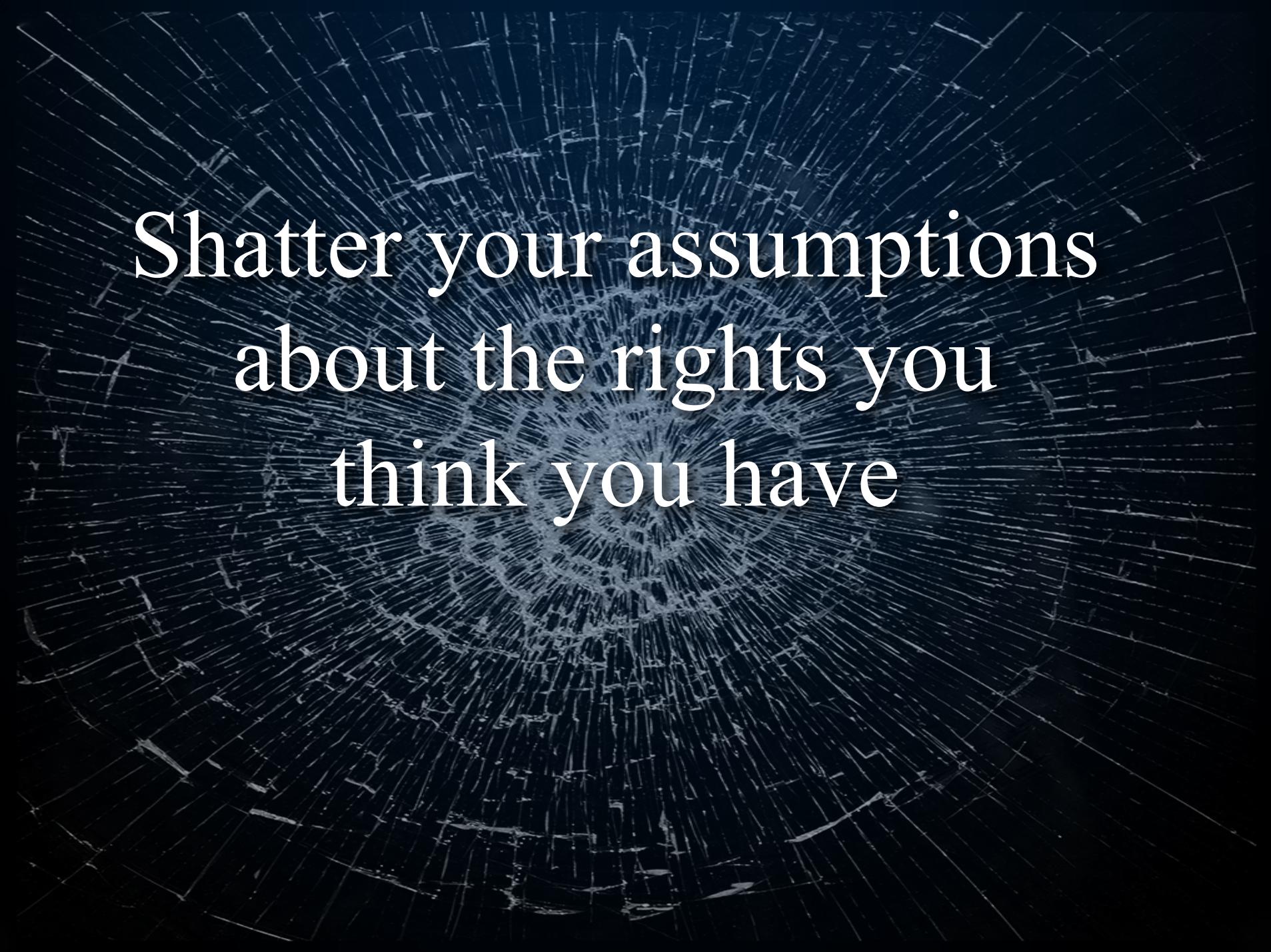
Focus on
the Facts
not the
Fury



Villainy wears many masks



None more dangerous than
the mask of virtue



Shatter your assumptions
about the rights you
think you have

FTC Section 5

Unfair Acts or Practices

An act or practice is unfair where it

- Causes or is likely to cause substantial injury to consumers,
- Cannot be reasonably avoided by consumers, and
- Is not outweighed by countervailing benefits to consumers or to competition





Bureaucrats Live in a
Bubble of Arrogance and Superiority

Government Lawyers
believe in unicorns
because truth is irrelevant

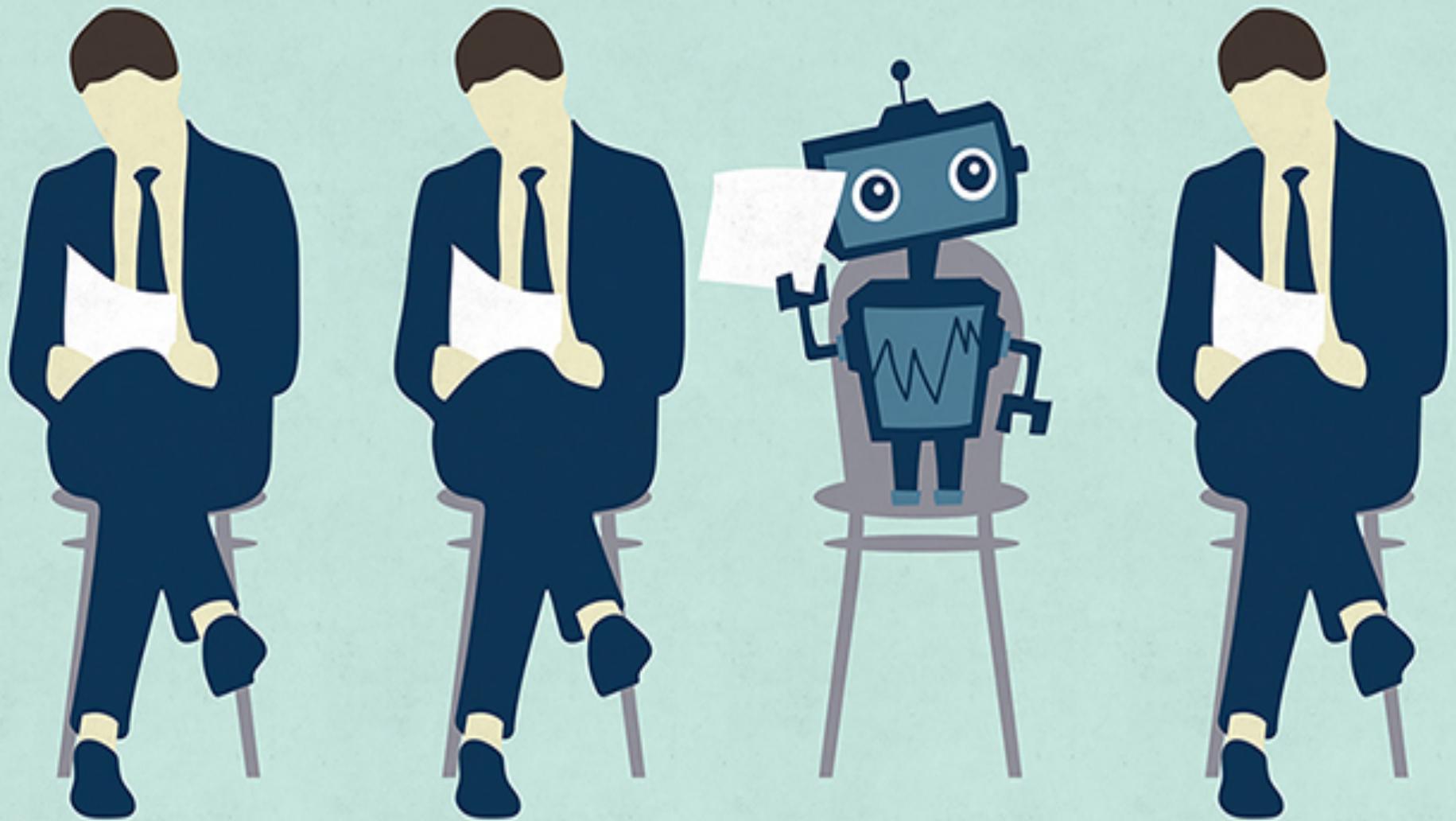




GASLIGHTING



Just doing my job and it's legal



No Rules
No Standards



Congress set the stage by allowing FTC
their own courts, policing and rulemaking.
Don't like the court ruling?
Overturn it.



Secret Law



Collaborative vs Punitive Regulatory Practices





Medicine and Technology
have a common enemy

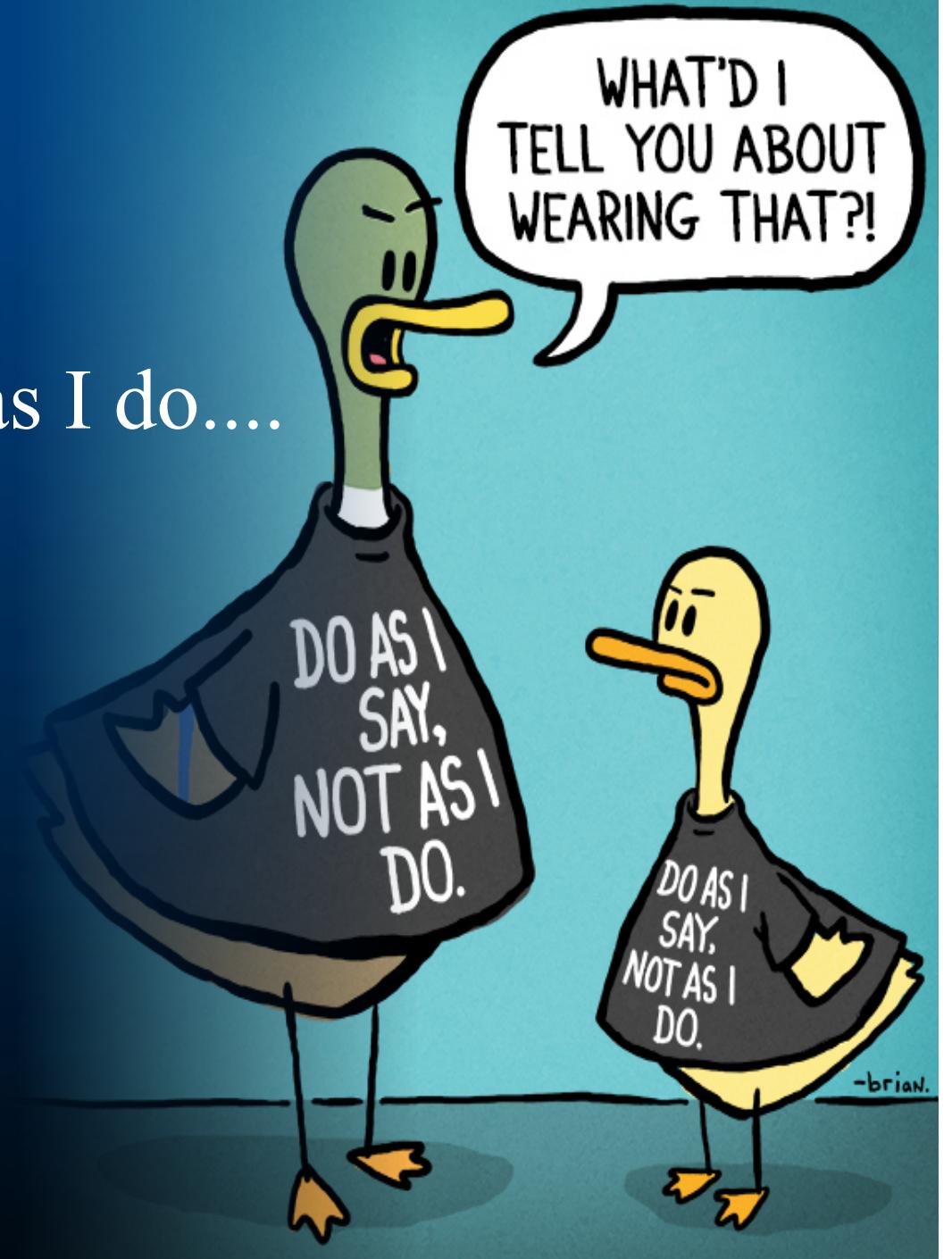
You are messing with health
and you are costing lives

because you are willing to mess
with what you know nothing about



Culture of Contempt

Do as I say and not as I do....
thy name is FTC

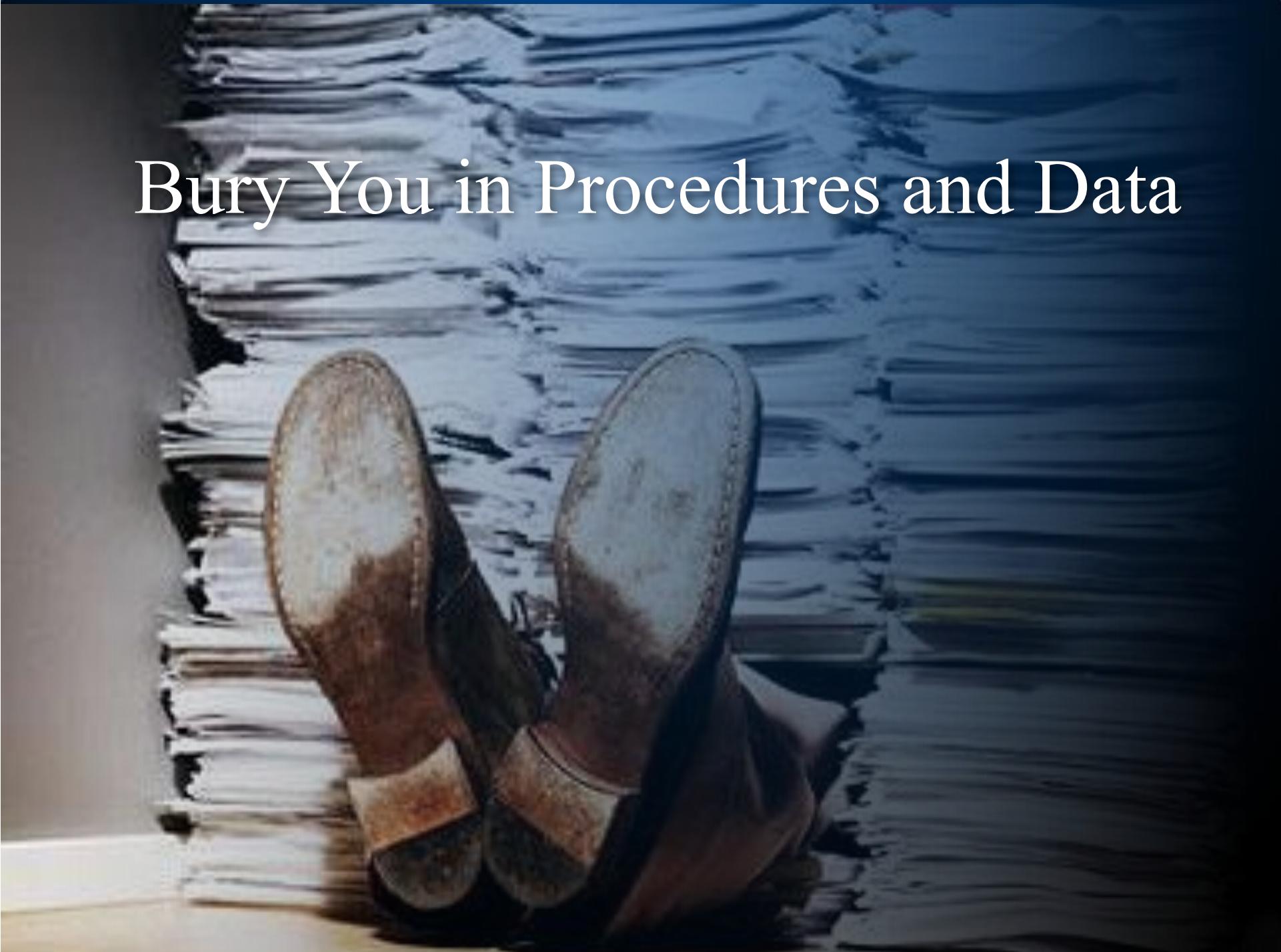


Please assume the position

A photograph showing a man in a blue shirt from the side, looking up at the lower half of a woman standing in front of him. The woman is wearing a light blue ribbed top and dark pants. The background is a plain, light color.

and we'll get
along just fine

THEY WANT
YOU TO BE
AFRAID

A photograph of a person's lower legs and feet standing on a sandy beach. They are wearing brown leather boots with dark brown laces. The ocean is visible in the background with white-capped waves. The sky is overcast with shades of blue and grey.

Bury You in Procedures and Data

There is no shortage of people
who think you're guilty
because the govt accuses you



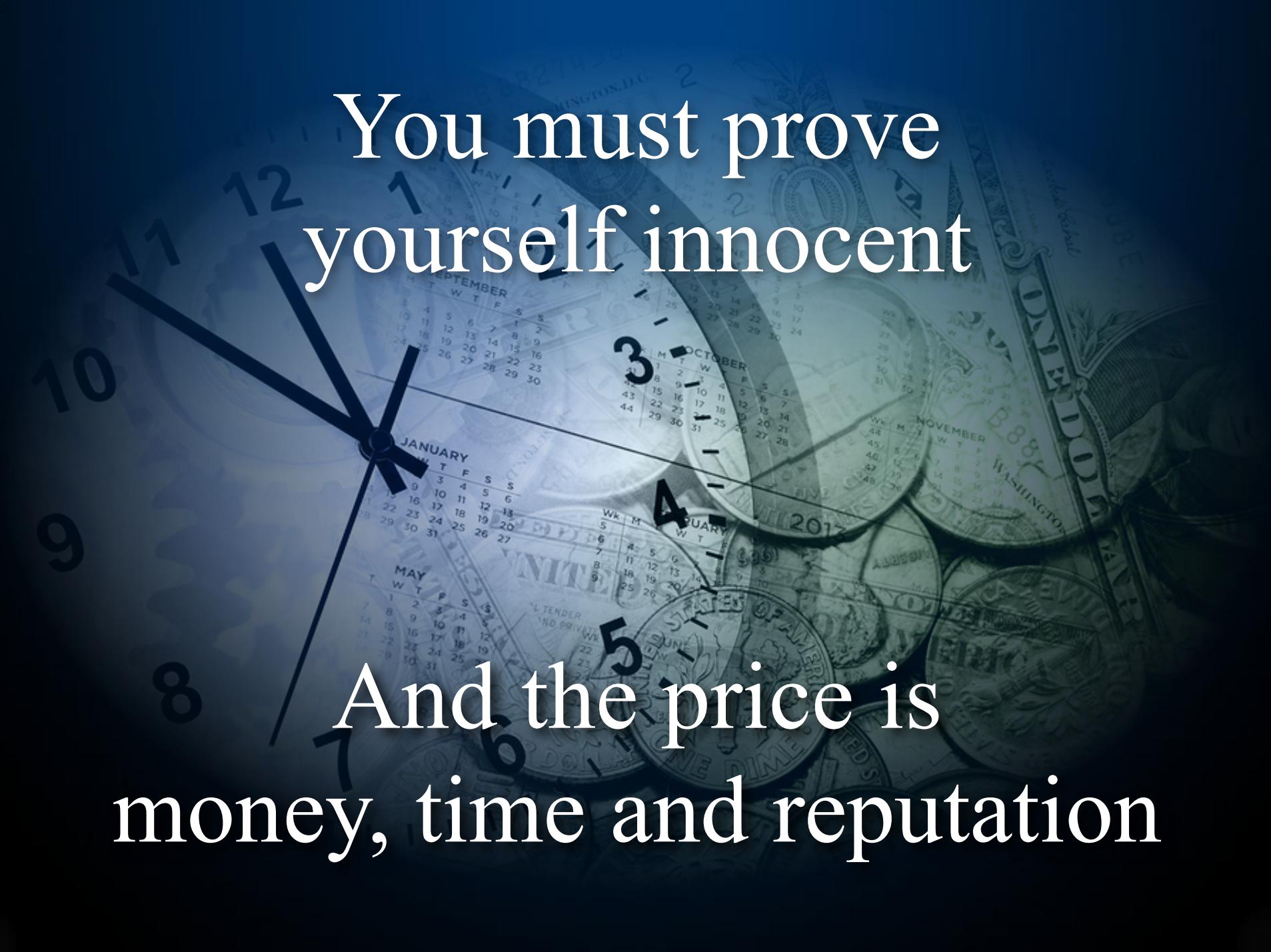
OOH



This arrangement creates a petri dish for corruption to grow



...and grow it does



You must prove
yourself innocent

And the price is
money, time and reputation



Excuse me stewardess,
but I speak DC Lawyer

When the FTC calls you're not
in discussion, you're not under
investigation....

you're under attack



FTC Litigation Strategy

OPTION 1



Federal Court In Your
Location



OPTION 2

DC Stopover in FTC's
Administrative Court



- Drain You Dry
- Make The Rules
- Allow Hearsay
- Attorneys Are Privileged
- Win 100% Time
- Reputation Assassination
- Psychological Warfare
- Cooperative Press
- Damage Operations

The FTC PR machine...

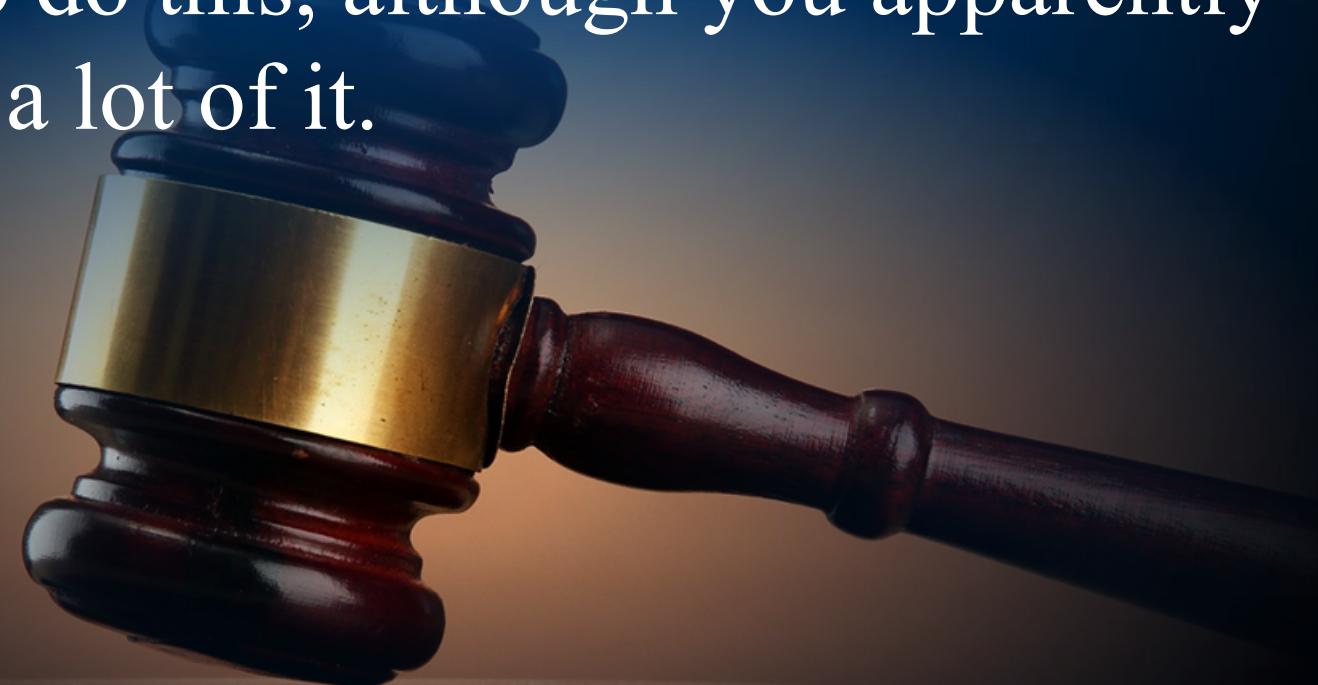
Spin, Intimidate & Dominate

P U B L I C
R E L A T I O N

UNITED STATES
**FEDERAL
TRADE
COMMISSION
BUILDING**

The Court:

Nobody really has litigated your authority in this area to do this, although you apparently have done a lot of it.



Overkill
and
Overreach



Avoiding Congress and the Courts by Creating Common Law

We are just pawns



The FTC has created
“secret law”



FTC lawyer: "The Court's order provides that Respondent may not discover the legal standards the FTC has used in the past and is currently using to enforce Section 5 in data security cases."



It's always best to keep your
adversaries docile via keeping
a bag over their heads



FTC Judge, Jury and Prosecutor

and they're
getting away with it



**EVERY DAY I GET TO WORK WITH THE
BEST INTENTIONS AND THE RIGHT
ATTITUDE...**

Jan 2010

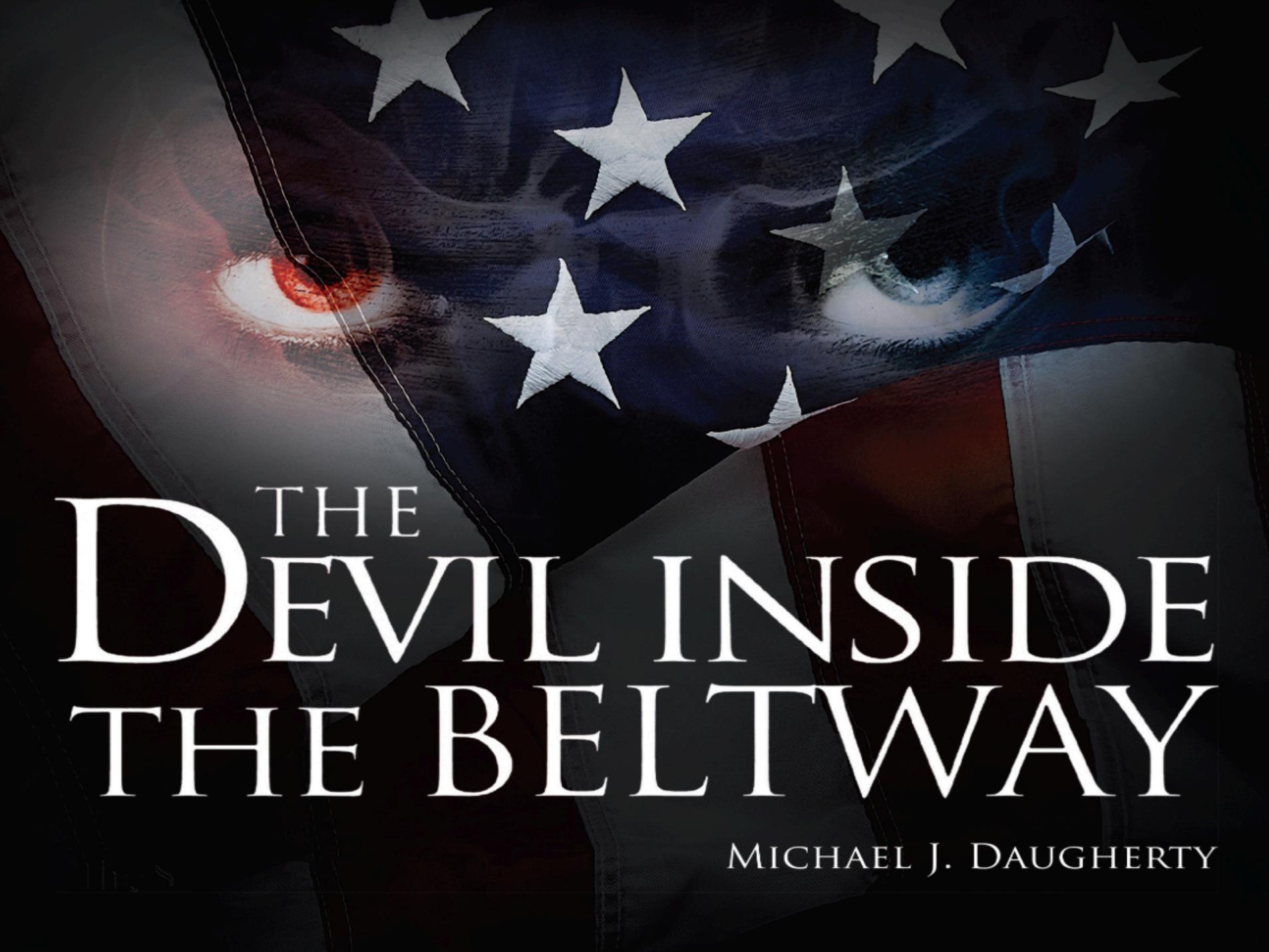
...THEN IDIOTS HAPPEN.

consent decree

illegality charge antitrust
garnishment rendered action
alleged damages mutual illegal
lien fault reviewed arising
litigation referred
property withdrawal enforcement barring
defendant violates showing obtained
stipulated issue court contempt
expressly question entered error
seek injunction settles agreed
criminal conduct payment
failure admit dispute consent
fraud effect memorialize party binding
dispute judicial judgment commonly civil
plaintiff cease agrees
law decree ceased typical
frequently voluntary agreement

You thought all would be fine
if you just signed the decree?





THE DEVIL INSIDE THE BELTWAY

MICHAEL J. DAUGHERTY



Investigation without Anesthesia



The Long Slog Up Justice Mountain



**FTC
STACKS
THE
DECK**

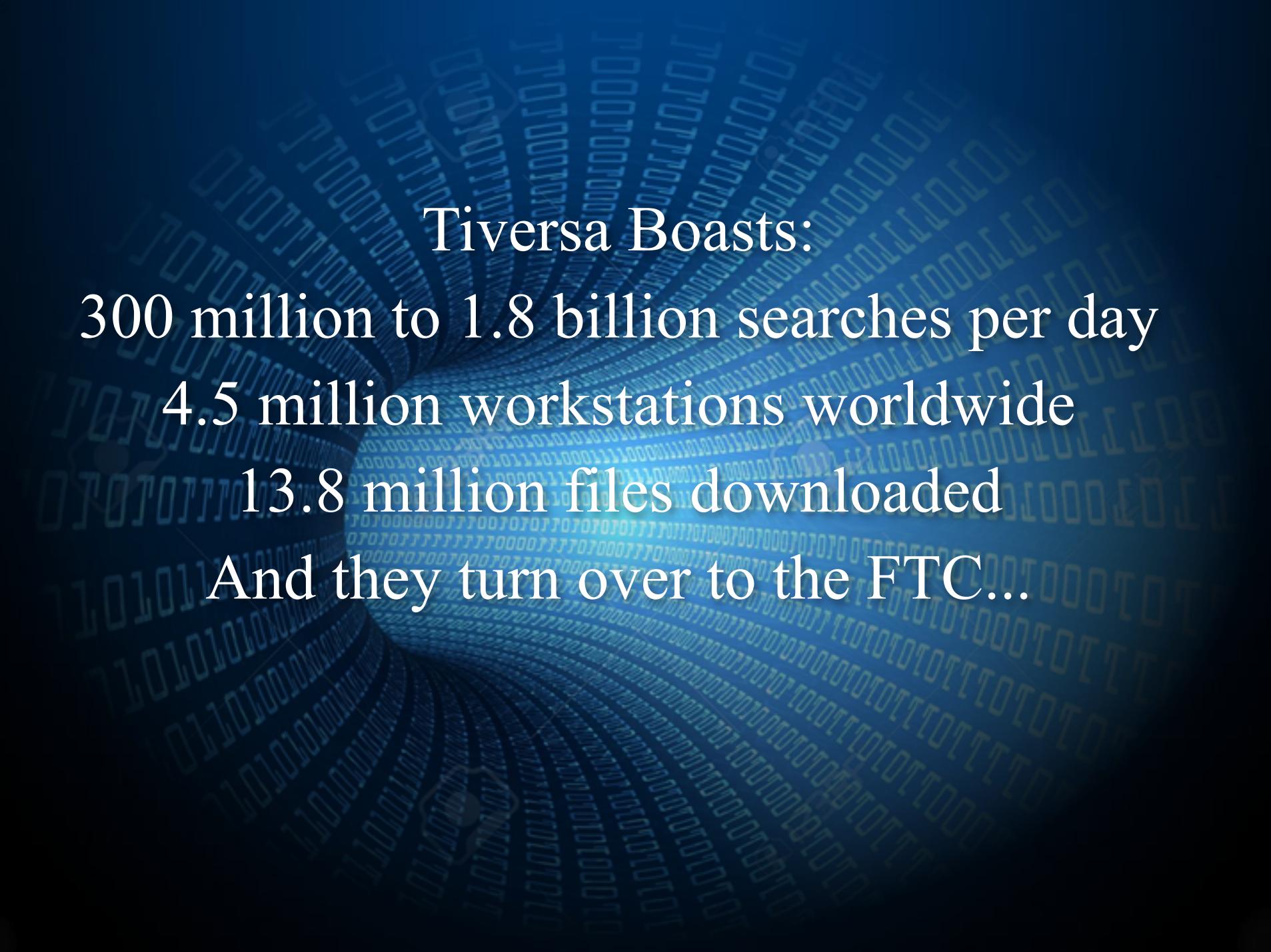


Action for Government Accountability



Shock and Awe





Tiversa Boasts:
300 million to 1.8 billion searches per day
4.5 million workstations worldwide
13.8 million files downloaded
And they turn over to the FTC...

86

BLOWHARD



GASLIGHTING



11th Circuit to FTC

There's already a history
of acrimony and I think
on behalf of the agency
the exertion of authority
in a mean-spirited way.



11th Circuit to FTC

FTC: The FTC attorneys that are handling the administrative proceeding in that hearing, they I'm assuming definitely know these details. They are not present. They are not here today. We are just -- we were just brought in from DOJ to represent this complaint in this action. So that's part of why we don't have these facts. But we represent the FTC here and we can get these facts for you.

THE COURT: So where are those lawyers? Are they too busy to come to Atlanta today? Is that one of them sitting back there in the gallery?

FTC: No, she's a U.S. Attorney here in Atlanta, unrelated.

THE COURT: How about this other fellow back there, is he an FTC lawyer too?

MR. MARCUS: Your Honor, we have a gentleman here from the FTC.

THE COURT: Are you involved in this investigation?

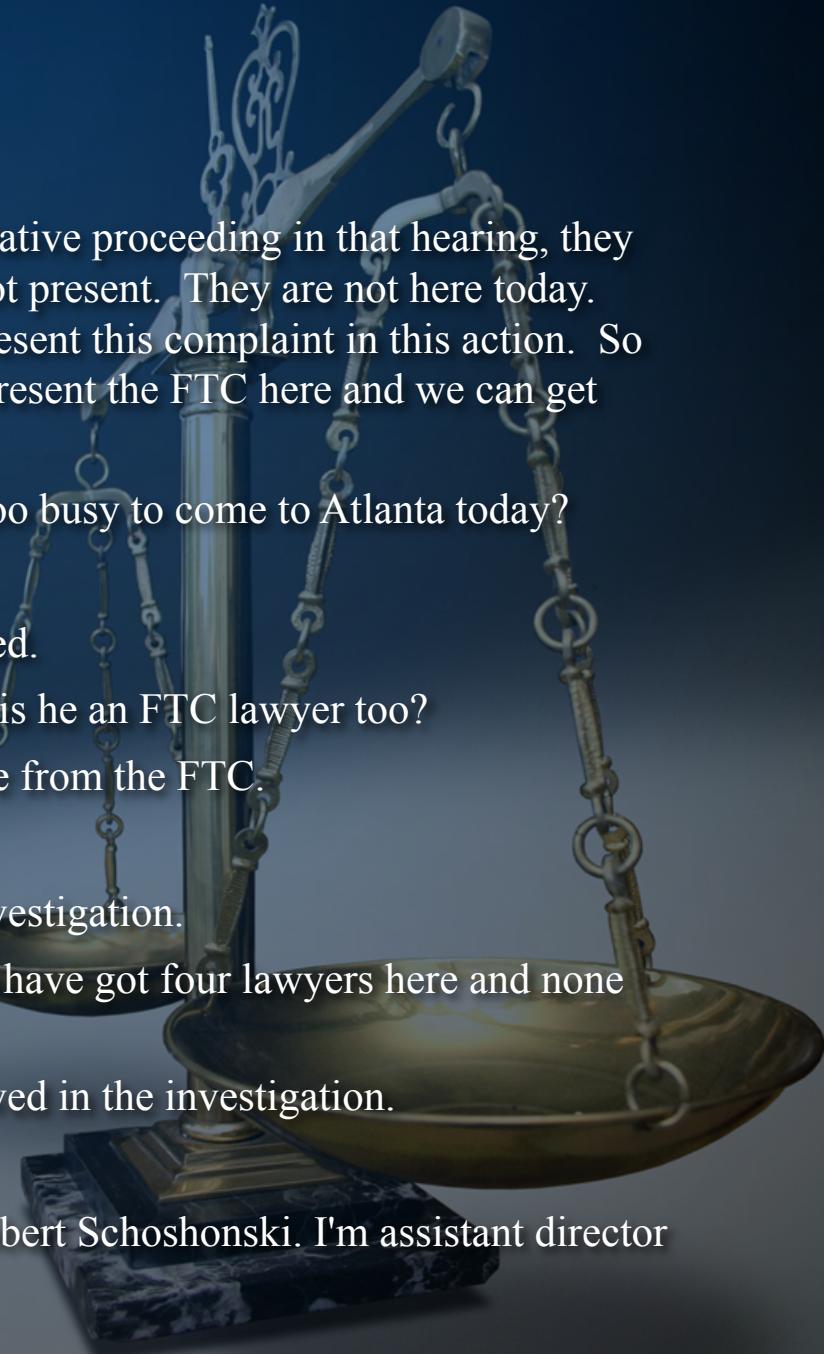
MR. MARCUS: I am personally not involved in the investigation.

THE COURT: Okay. So you are off the hook. So far I have got four lawyers here and none of them are involved in the investigation.

MR. MARCUS: We do have are a lawyer who is involved in the investigation.

THE COURT: And what's your name?

MR. SCHOSHINSKI: Good morning, Your Honor. Robert Schoshonski. I'm assistant director in the Division of Privacy and Identity Protection.



11th Circuit to FTC

THE COURT: All right. So in this case, what investigation has been made as to the source of the documents that the police department out in California found?

MR. SCHOSHINSKI: Your Honor, the complaint counsel, so that is the FTC counsel who is litigating the complaint in the administrative action, noticed the depositions of the two individuals who pled no contest to identity theft. One they could not serve because she was just simply not findable. The other one was in jail.

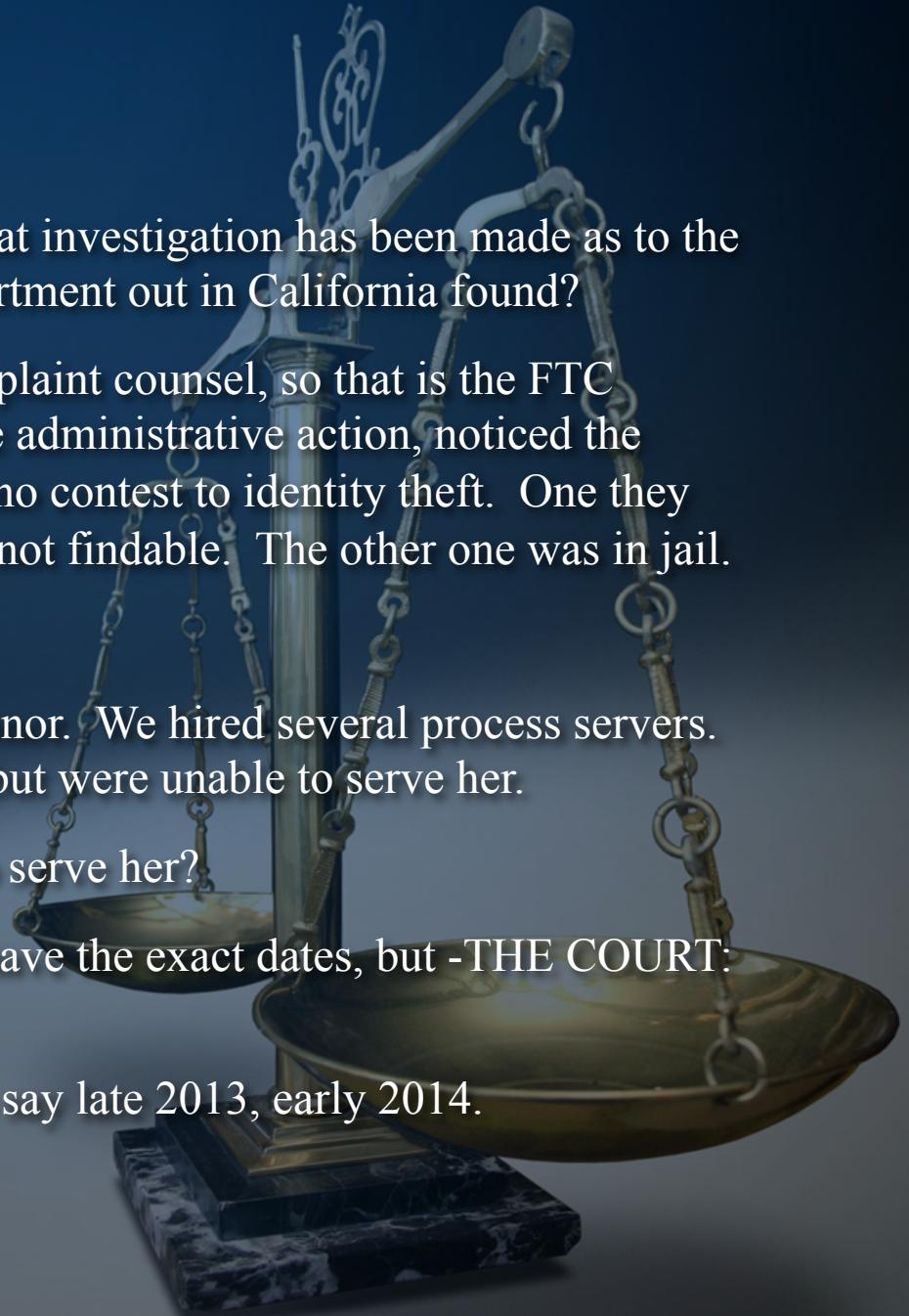
THE COURT: Did you try to find her?

MR. SCHOSHINSKI: Yes, we did, Your Honor. We hired several process servers. They made many attempts to try to find her but were unable to serve her.

THE COURT: And when did you first try to serve her?

MR. SCHOSHINSKI: Your Honor, I don't have the exact dates, but -THE COURT: Well, give me an approximation.

MR. SCHOSHINSKI: Your Honor, I would say late 2013, early 2014.



11th Circuit to FTC

THE COURT: So really late in the game, you finally decided that it made sense to go and find out with respect to one of the allegations that's the basis of your investigation that's been ongoing for months, because the CID was something I dealt with some months ago, that you finally decided -- or not you, but your lawyers finally decided that maybe it would be good to try to find the people who actually had the information to determine where they got it?

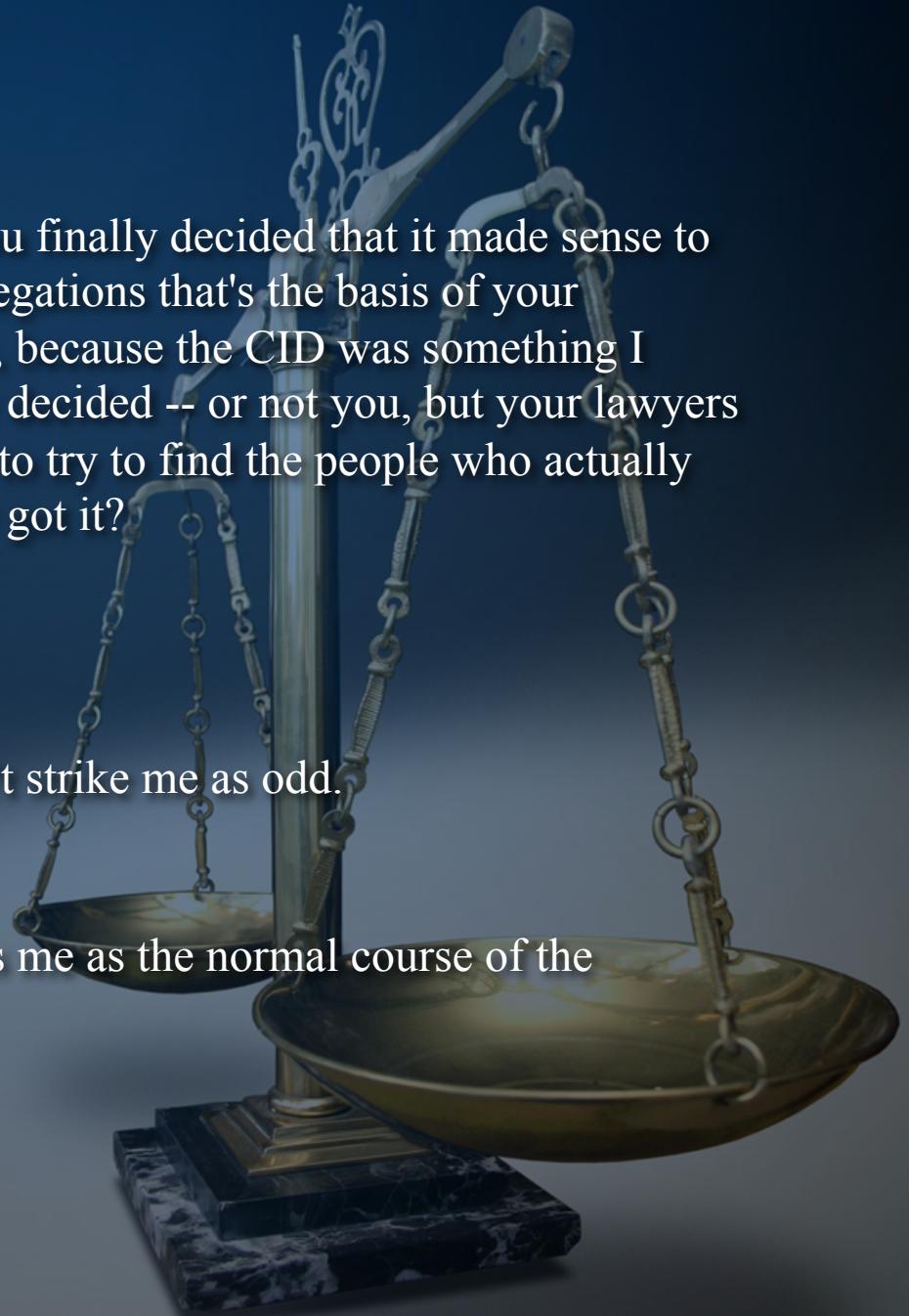
MR. SCHOSHINSKI: Yes, Your Honor.

THE COURT: Does that strike you as odd?

MR. SCHOSHINSKI: Your Honor, it doesn't strike me as odd.

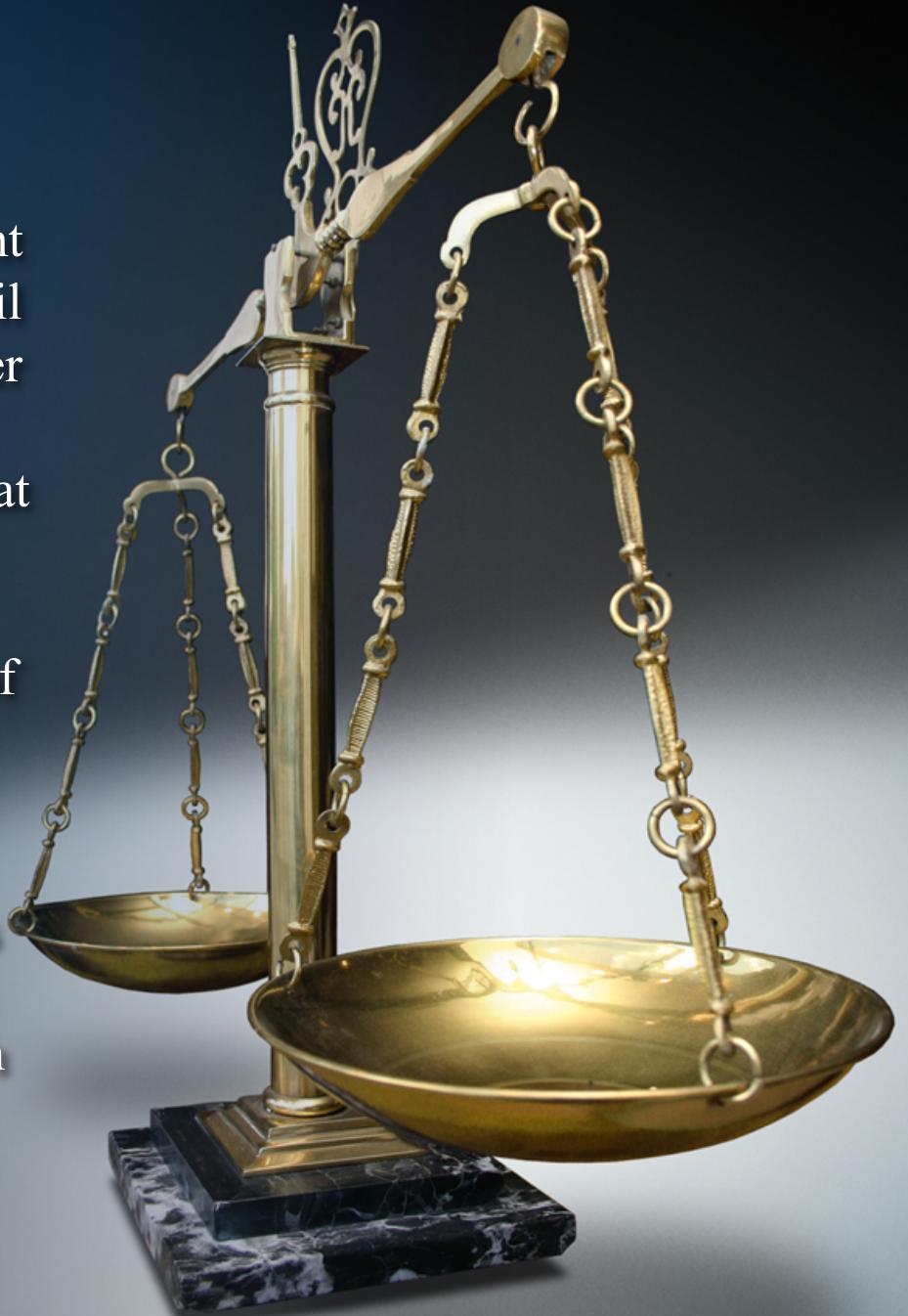
THE COURT: Does it strike you as late?

MR. SCHOSHINSKI: Your Honor, it strikes me as the normal course of the investigation.



11th Circuit to FTC

THE COURT: Boy, that's a sad comment on your agency, that you would wait until months before a hearing and months after you instituted an investigation on a principal claim that you are asserting, that you have not even taken any effort to interview the people that you claim had the documents that underlie the charge of a security breach. That strikes me as almost being unconscionable. And how much money -- how much activity was there before you served those subpoenas trying to get the information from LabMD with respect to a security breach that you don't even know how it occurred? How much activity



11th Circuit to FTC

MR. SCHOSHINSKI: Your Honor, how would you like me to estimate?

THE COURT: Let's start in months.

MR. SCHOSHINSKI: Well, Your Honor, I believe the investigation began in January of 2010.

THE COURT: Okay. So three years before you tried to subpoena them? I'm sorry, two and a half years?

MR. SCHOSHINSKI: Your Honor, the knowledge of this incident didn't occur until after the CID enforcement hearing up here in Atlanta. That's when we were notified that this incident had occurred, in October of 2012.

THE COURT: So you found out about the -- the incident you are talking about is the California police incident?

MR. SCHOSHINSKI: That's correct, Your Honor.

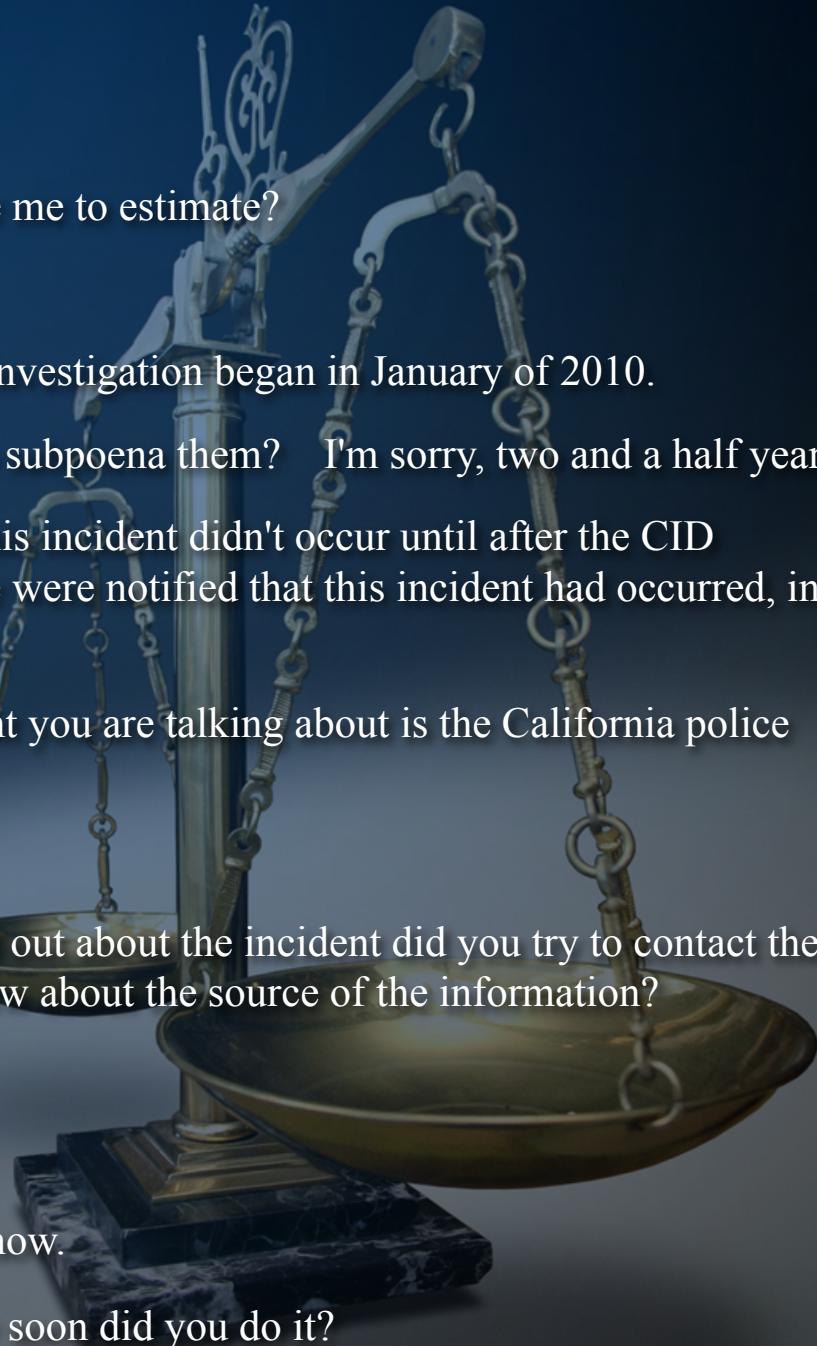
THE COURT: All right. And how soon after you found out about the incident did you try to contact the police authorities in California to find out what they knew about the source of the information?

MR. SCHOSHINSKI: Immediately.

THE COURT: And what did they tell you?

MR. SCHOSHINSKI: They told us that they did not know.

THE COURT: And then what did you do next, and how soon did you do it?



11th Circuit to FTC

MR. SCHOSHINSKI: We shared the information with LabMD concerning the -- what we found out once we were able to confirm that it was LabMD's information, and we then attempted to find out further from the California police department what they knew about the source of this information.

THE COURT: And what did they tell you they knew about the source?

MR. SCHOSHINSKI: They told us they were not able to get the source from the defendants in the case.

THE COURT: So sitting here today, you have no idea where the documents came from, whether they came from LabMD or some other source? Is that a fair thing to say?

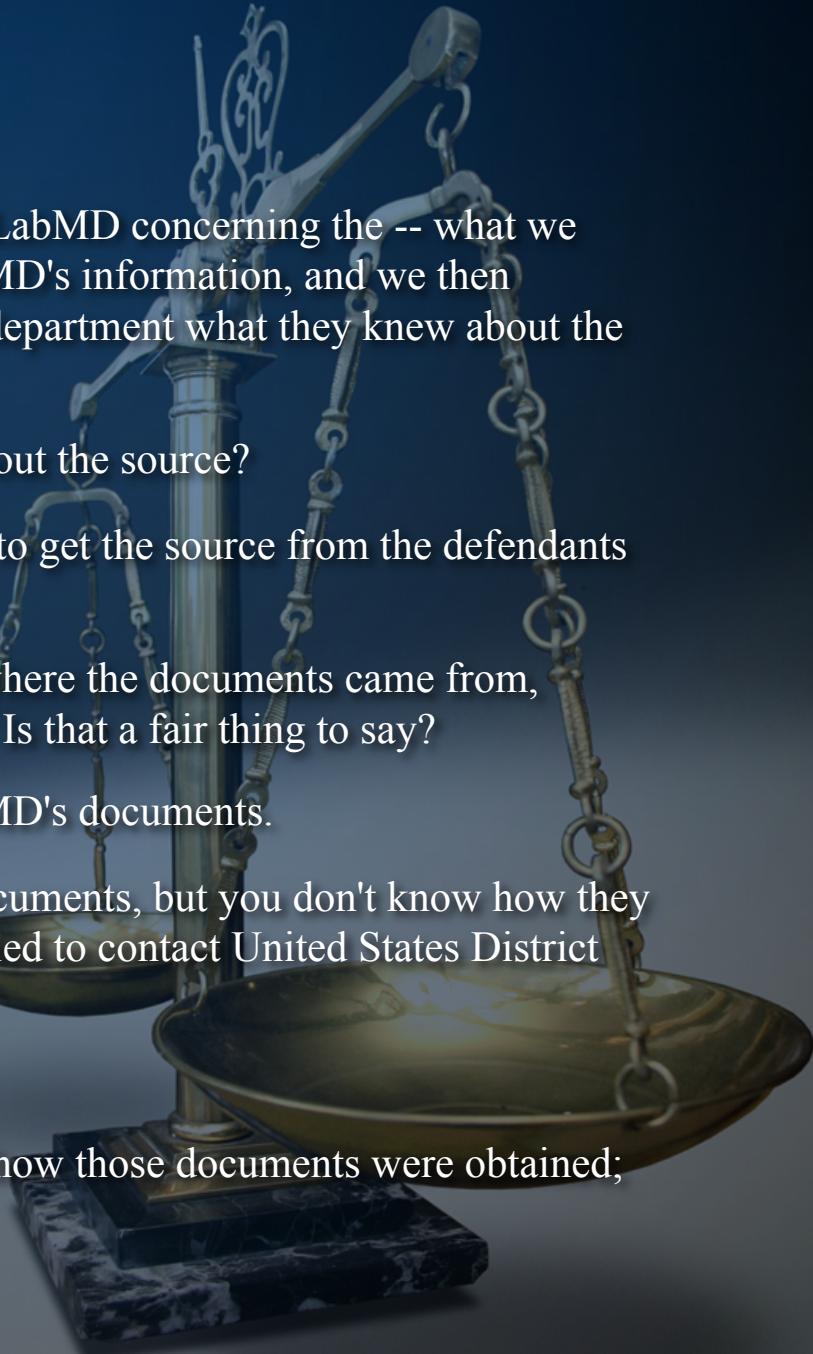
MR. SCHOSHINSKI: No. We believe they were LabMD's documents.

THE COURT: Well, they might have been LabMD's documents, but you don't know how they got into the possession of the two individuals that you tried to contact United States District Court that pled guilty to this offense?

MR. SCHOSHINSKI: That's correct, Your Honor

THE COURT: So you have no information to establish how those documents were obtained; is that right?

MR. SCHOSHINSKI: That's correct, Your Honor.



11th Circuit to FTC

THE COURT: And you are still proceeding on this claim?

MR. SCHOSHINSKI: Yes, Your Honor, because the claim is not concerning that incident alone.

THE COURT: All right. But are you still proceeding on that claim?

MR. SCHOSHINSKI: We are proceeding on that evidence, Your Honor.

THE COURT: And that evidence relates to other claims, because you have other documents that were found in other places?

MR. SCHOSHINSKI: That evidence relates to the potential injury suffered by consumers as a result of exposure of this information.

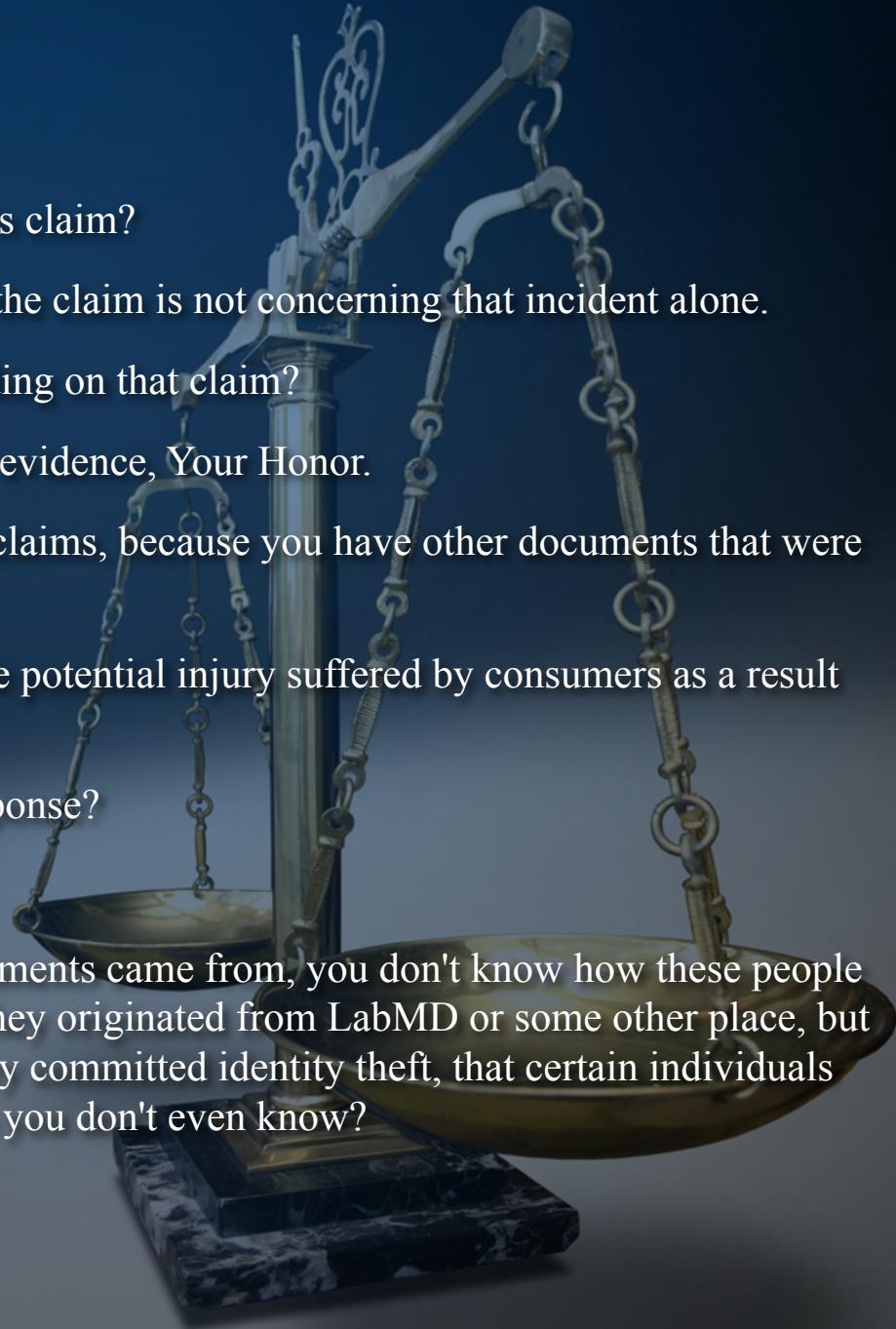
THE COURT: Are you serious about that last response?

MR. SCHOSHINSKI: Yes, Your Honor, I am.

THE COURT: So you don't know where the documents came from, you don't know how these people got the possession of it, you don't know whether they originated from LabMD or some other place, but you are going to use that to show that, because they committed identity theft, that certain individuals were damaged by documents, the source of which you don't even know?

MR. SCHOSHINSKI: Yes, Your Honor.

THE COURT: Holy cow.



11th Circuit to FTC

11th Circuit: The FTC is going to go into the business of monitoring and investigating and regulating security breaches and they have decided I think to do that within what they believe is their administrative authority, because I think they went to Congress and Congress wouldn't authorize that for whatever reason, whether it's politics or not. But I think there has been no amendment to Section 5 to specifically allow that. But they are taking the position that they have the authority to do that.

MR. RUBINSTEIN: That is correct.

11th Circuit: I think that there is a significant question about whether Section 5 allows that, but I'm not sure I can decide that based upon my jurisdictional limitations, perhaps.



PLEASE TAKE YOUR SEATS



**FACEBOOK COURT IS
NOW IN SESSION**

Amateur Hour at Federal Level

We have spoken on panels.

We have conducted workshops.

We have published guidance for businesses just like LabMD about our view that data security practices can be enforceable under Section 5 if they become unfair or deceptive in some form or fashion.

Rather than the cyber “white knight” Tiversa purports to be, the company often acted unethically and sometimes unlawfully in its use of documents unintentionally exposed on peer-to-peer networks



fraud

TIVERSA.

At least one Tiversa employee, under the direction of CEO Robert Boback, provided intentionally false information to the United States government on more than one occasion



Boback later provided false testimony about fabricated documents to the U.S. House of Representatives

According to a whistleblower, Tiversa fabricated that an Iranian IP address downloaded and disclosed the blue prints for the President's helicopter, Marine One

Tiversa allegedly did so in order to receive press attention for the company

The Committee found that statements made by Tiversa under oath about this matter could not be substantiated



After obtaining information on HIV/AIDS patients at a clinic in Chicago, Tiversa employees called the patients, purportedly in an attempt to get the clinic to hire Tiversa

When the clinic refused to hire Tiversa, the company gave the information to a lawyer that worked with the company who filed a class-action lawsuit that eventually settled for a substantial amount of money.



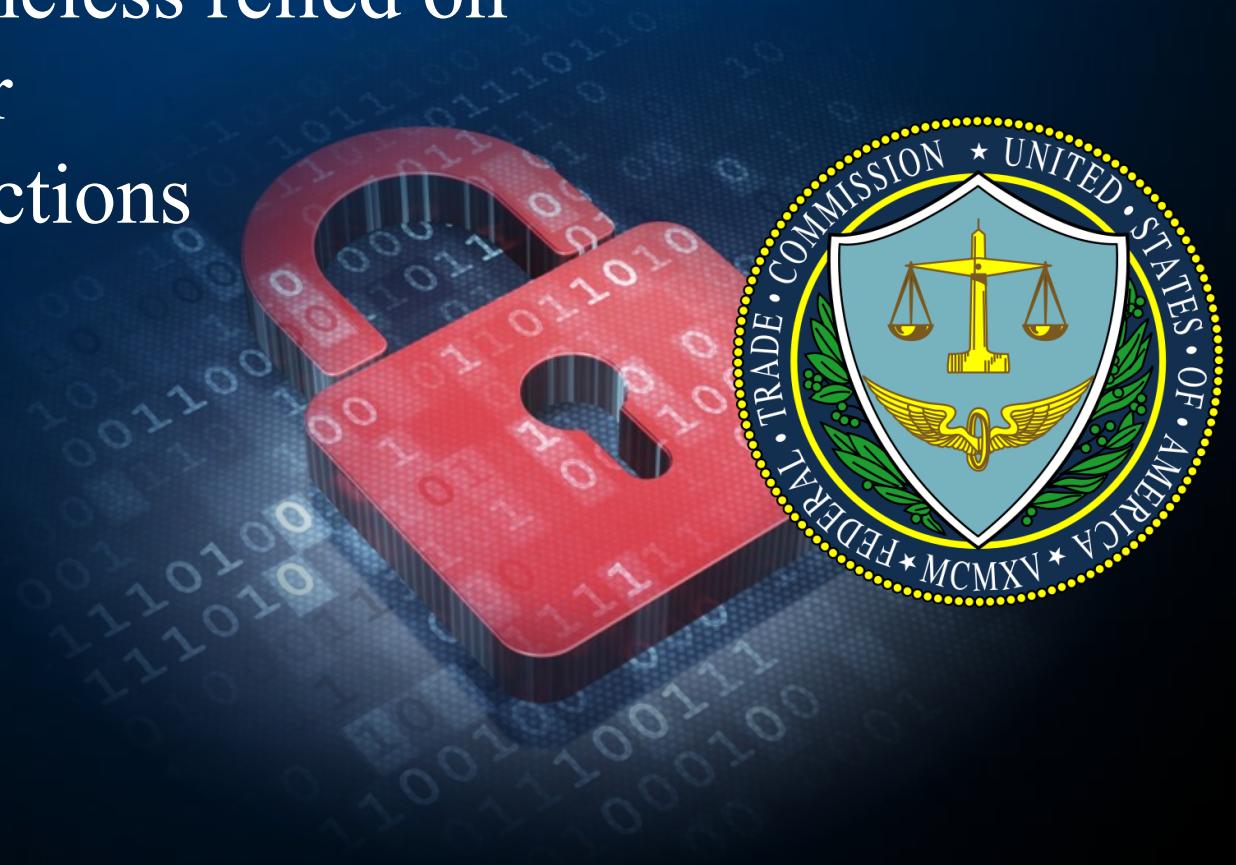
Tiversa had information about a breach at the House Ethics Committee exposing information about investigations into Members of Congress. Tiversa did not return this information to the Ethics Committee and instead appears to have sought publicity for the leak.



Tiversa's co-founder claims the company is in possession of a greater quantity of sensitive and classified information than NSA-leaker Edward Snowden



Information provided by Tiversa to the FTC through a shell organization known as the Privacy Institute was only nominally verified but was nonetheless relied on by the FTC for enforcement actions



Tiversa obtained non-public, advanced knowledge of FTC enforcement actions from which it attempted to profit



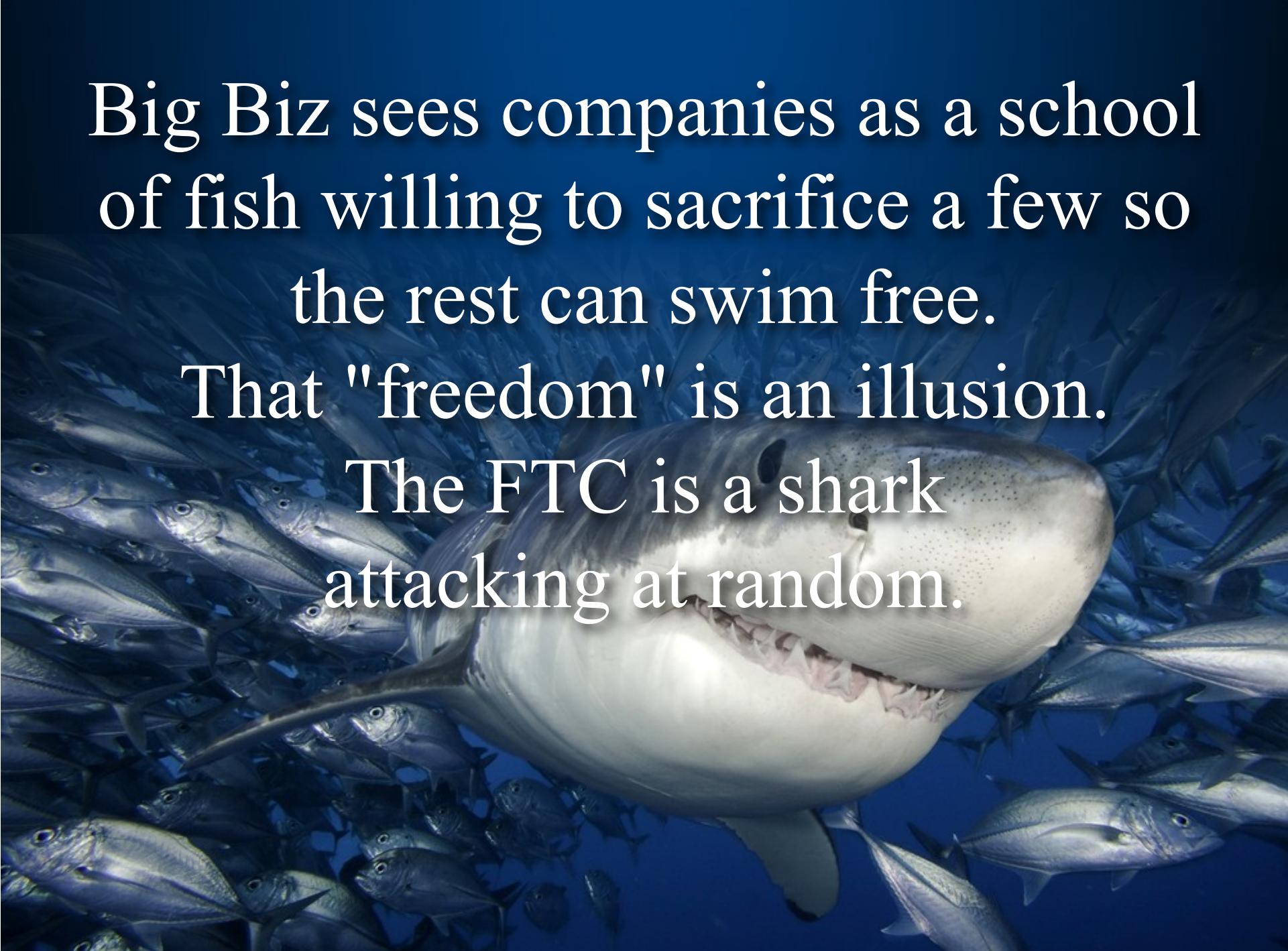


Caught in the web...

and the only way out is patience,
perseverance and money

Shakedown

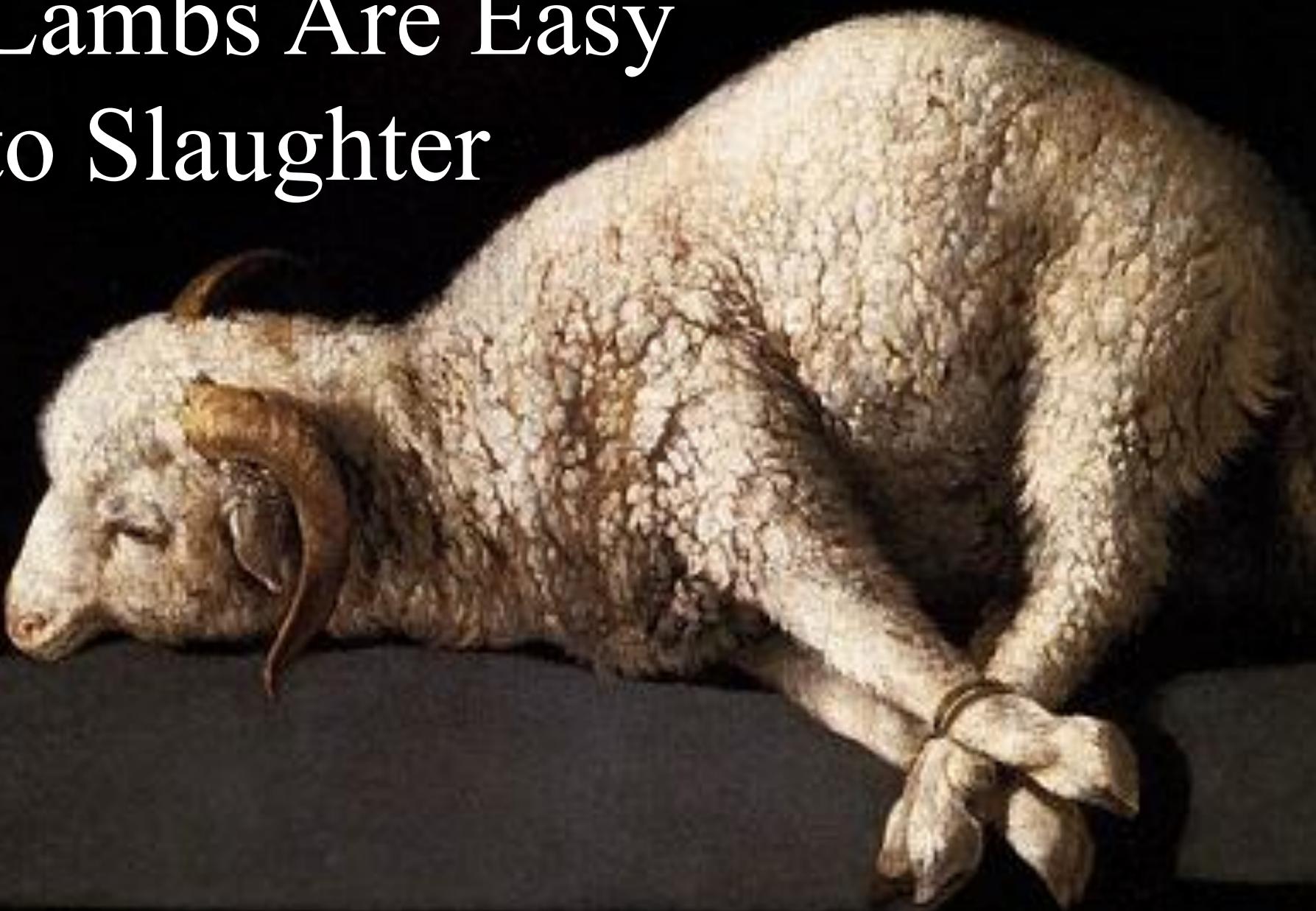




Big Biz sees companies as a school
of fish willing to sacrifice a few so
the rest can swim free.

That "freedom" is an illusion.
The FTC is a shark
attacking at random.

Lambs Are Easy to Slaughter



A "breach" is not a breach



FTC ALJ: Has the commission issued guidelines for companies to utilize to protect this information or is there something out there for a company to look to?

MR SHEER: There is nothing out there for a company to look to.

FTC's administrative Process appears to be rigged against respondents. For nearly the past twenty years, in 100% of the cases where the ALJ ruled for FTC, the commission affirmed, but in 100% of the cases where the ALJ ruled for respondent, the commission reversed. In other words, FTC never loses.



**REMEMBER
WHEN I CARED?**

ASKED NO HONEY BADGER EVER!



Susanne Sachsman Grooms



Sen Jay Rockefeller



Rep Elijah Cummings



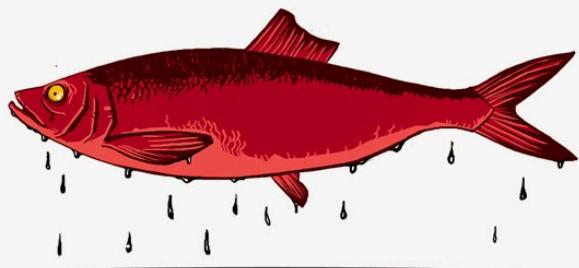


Whistleblowers have it rough

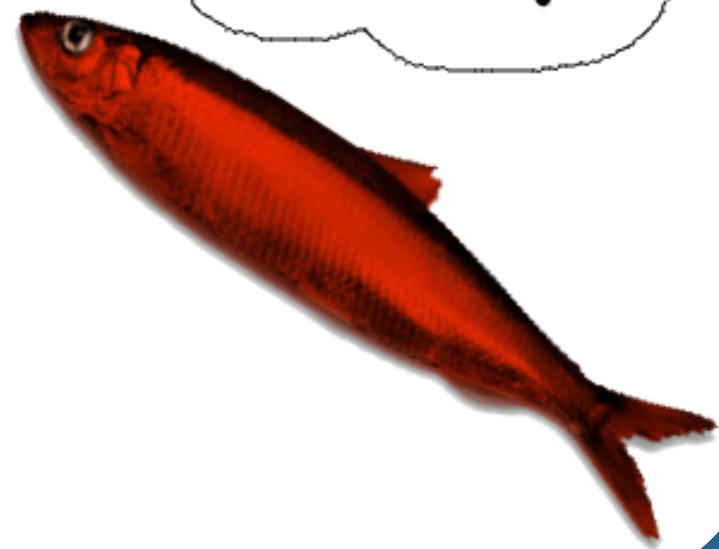
Don't look so you
won't find

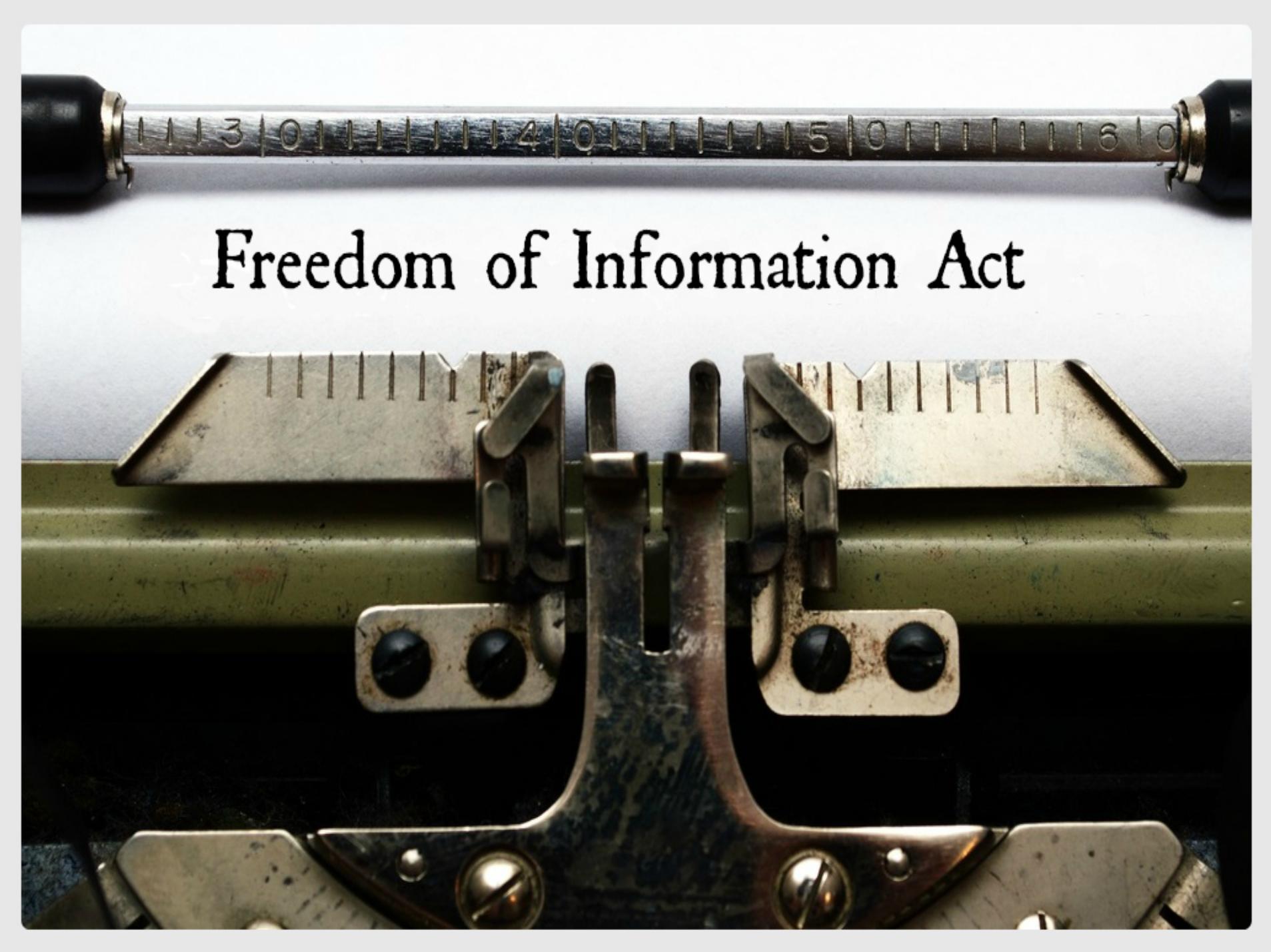


THE RED HERRING



I'm here to
distract you

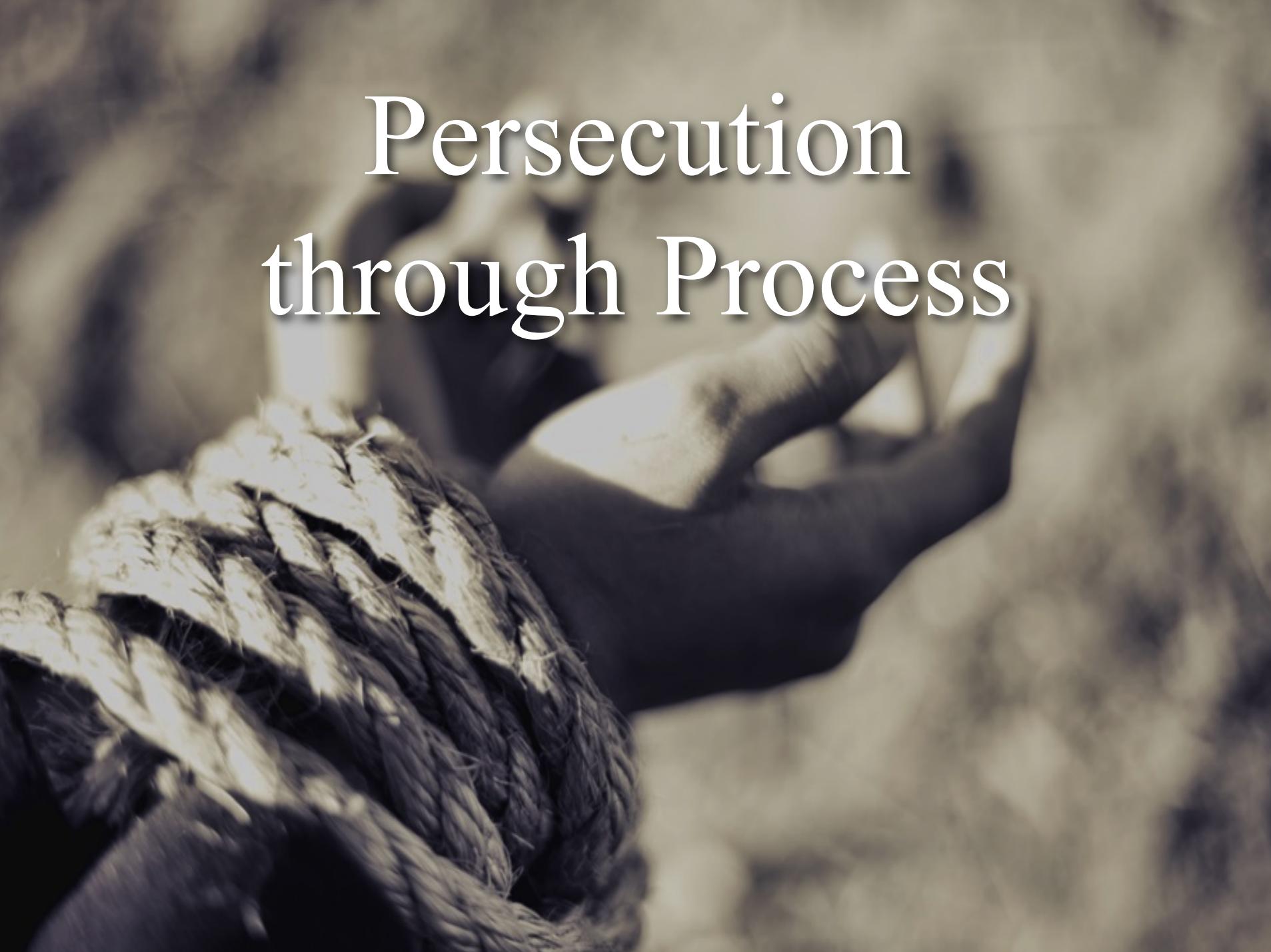




Freedom of Information Act



Persecution through Process





Do You Think Other
People Will Find Out?

HEAR THE SCREAMING
SILENCE



BOY, I SAY BOY...



**YOU'RE ABOUT TO EXCEED THE
LIMITATIONS OF MY MEDICATION.**

FIFTYONEFIFTY

FORT TOTTEN

No Courage

**THAT MOMENT WHEN YOU
WITNESS**



A woman with dark hair and makeup, wearing a black top, holds a blue and white patterned coffee cup. She is looking directly at the camera with a neutral expression. The background is a textured, light-colored wall.

**KARMA IN IT'S FULL, GLORIOUS
SPLENDOR**



The US government has the wrong people with
the wrong skills overseeing cybersecurity...

and it's costing us all a fortune



The LEFTOVERS

We have a cybersecurity problem



and the FTC is not the solution

Busyness

+

Short Attention Span

=

Rollover

Power + ego - knowledge =



Loss of Health, Safety and Welfare



A Century of Letting a Them Eat Cake



To know a person ... watch
what they do, not what
they say.

Danny Santagato



ARTISTS AGAINST

LONELINESS
HATE
BULLYING
ANGER
SUFFERING



THE TRUE AGENDA OF THE FTC IN CYBERSECURITY REGULATION

- Become the main US Privacy and Data Security Regime while lacking Congressional Authority
- Expand FTC jurisdiction into Medicine, Technology, and Finance via precedent and not Congressional Approval
- Build a portfolio of consent decrees that will become Common Law circumventing Congresss and the Courts
- Build a reputation of fear and relentlessness so organizations will roll over, avoiding litigation that will limit the self-appointed power of the FTC
- Convince the Courts that this is legal via creating false anxiety about dire alternatives

TEAM PLAYBOOK

TOP SECRET

FOR YOUR EYES ONLY
TOP SECRET



You are the key...
not the Feds