



ALFA International
THE GLOBAL LEGAL NETWORK

INVESTIGATIONS

The Good, The Bad, and The Ugly

2022



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THE GOOD, THE BAD, AND THE UGLY



ALFA International
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THE GOOD



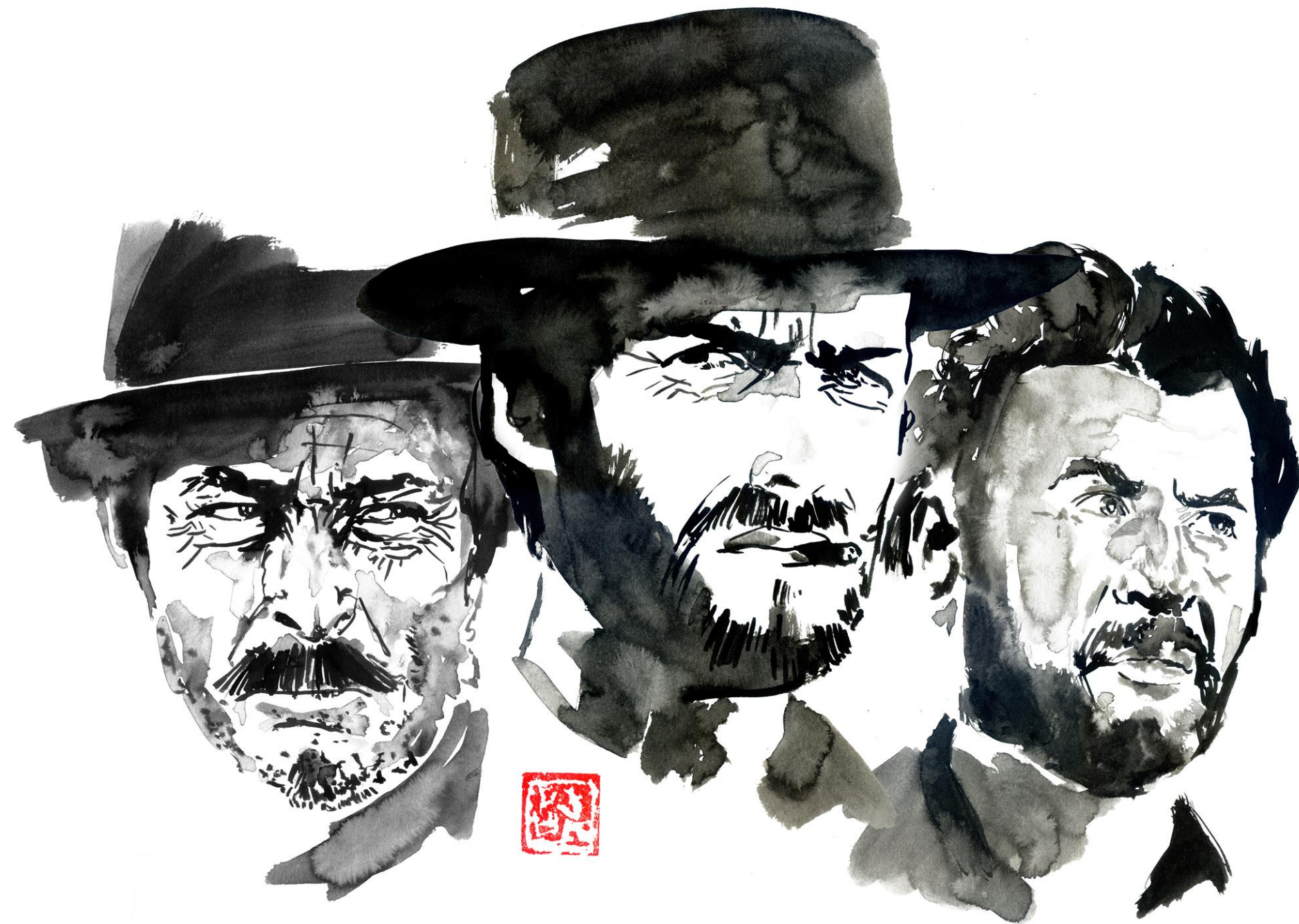
Investigation Models

THE GOOD



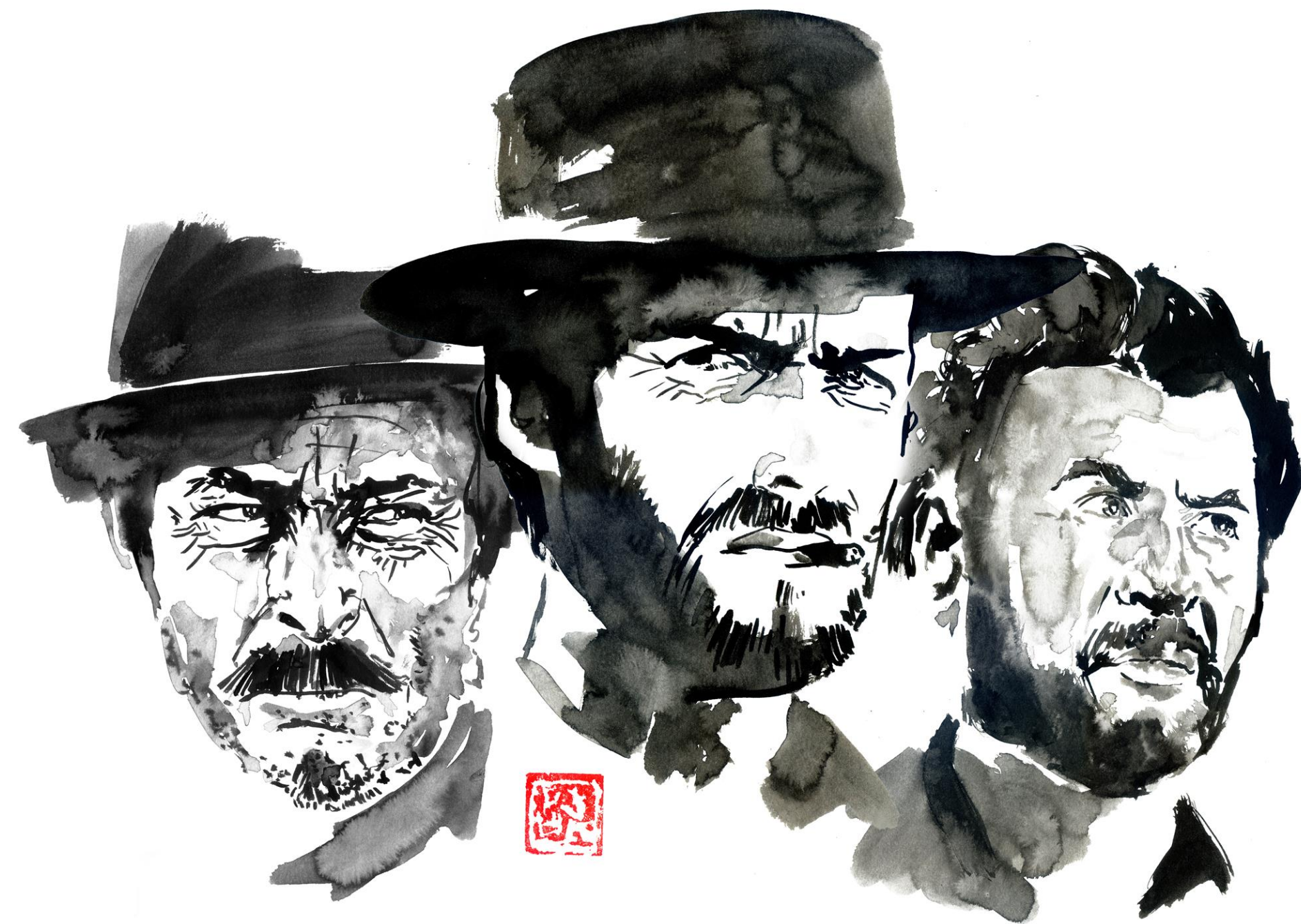
Who does your company use for Investigations?

- a. Human Resources
- b. Local Management
- c. General Counsel
- d. Outside Counsel/Professional Investigator
- e. A combination of the above



Investigation Checklist

- Planning & Preparation
- Interviews
- Documentation
- Questions
- Concluding Interviews (Complainant)



Investigation Checklist

- Concluding Interviews (Witnesses)
- Analyzing Facts/Make a Determination
- Appropriate Corrective Action
- Close Investigation/Follow Up

THE BAD



When the investigation
takes an unexpected
turn

THE BAD



The Anonymous Complaint and the Interfering CEO

THE BAD



When the Outside
Investigator Takes an
Uncharted Turn

THE BAD



We Forgot to Interview
Who?

THE UGLY



When the investigation
determines the case

THE UGLY



Diaz v. Tesla \$136.9 million jury verdict

- Anti-Handbook Handbook
- Investigations – “Stupid Stuff?”
- Training?
- No written procedure

THE UGLY



Menaker v. Hofstra University

- Irregular investigation
- Didn't interview relevant witness
- Didn't determine credibility of complainant
- Didn't provide Menaker with results of investigation
- Didn't follow its procedures

THE UGLY



Doe v. University of Denver

- Title IX claim, Roe alleged sexual assault by Doe
- Doe was expelled,
- Doe alleged investigation was pervaded by anti-male bias

THE UGLY



Doe v. University of Denver (cont.)

- Botched investigation resulted in disciplinary action against weight of evidence
- Interviewed 11 Roe witnesses/initially refused to interview 5 Doe witnesses
- Psychologist testimony not considered – deemed character testimony

THE UGLY



Doe v. University of Denver (cont.)

- 6 witnesses – agreed with Roe
- Only 3 witnesses had same version of facts
- Final report did not mention inconsistencies
- No discussion of potential motive for false report
- Plausible inference of discrimination against Doe on the basis of his sex

THE UGLY



Ibrahim v. Alliance for Sustainable Energy, LLC

- Pretext can be inferred from shortcomings in investigation
- Muslim/inappropriate comments to two women - termed
- Ibrahim sued alleging discrimination

THE UGLY



Ibrahim v. Alliance for Sustainable Energy, LLC (cont.)

- Argued pretext was shown in the shortcoming of the investigation
 - More lenient to similarly situated employees can be pretext; so can shortcomings in employer's investigation

THE UGLY



Ibrahim v. Alliance for Sustainable Energy, LLC (cont.)

- Investigation consisted of asking Dr. Ibrahim “what did you say?”
- More thorough investigation was conducted when similar misconduct alleged against a white male

THE UGLY



Investigation is in their name, and yet -
Olympic gymnasts seek \$1 billion from the
FBI over botched sex abuse investigation

- Grossly derelict in duties
- Credible complaints/corroborated
- Declined to interview witnesses who were willing to talk
- Conspiracy with US Olympic and Paralympic Committee/USA Gymnastics, Inc.
- July 2015 – September 2016

THE UGLY



Possible Causes of Action

- Negligence
- Negligent Hiring/Retention
- Knew or should have known if had done an investigation about the unwanted behavior

THE UGLY



Negligent Hiring/Retention

- a. Existence of an employment relationship
- b. Employee's incompetence
- c. Employer's actual or constructive knowledge of such incompetence
- d. Employee's act or omission causing Plaintiff's injuries
- e. Employer's negligence in hiring or retaining the employee as the proximate cause of Plaintiff's injury

THE GOOD, THE BAD, AND THE UGLY



QUESTIONS AND ANSWERS

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