

# **BEST PRACTICES FOR RESPONDING TO SEARCH WARRANTS AND SUBPOENAS**

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## **DISCLAIMER**

- AUSA Woolery is speaking in her personal capacity and not on behalf of the Department of Justice.
- AUSA Woolery does not bind DOJ or state its official policy or position.

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## BACKGROUND: SEARCH WARRANTS

- **Prosecutor’s Burden:**
  - to show Probable Cause (PC) to a magistrate judge
    - Must be “fresh”
  - Fed. R. Crim. P. 41
  
- **Search and Seizure Warrant Paperwork:**
  - USA submits: (a) affidavit; (b) application; and (c) warrant

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AOJ 206 (Rev. 04/03) Application for a Search Warrant

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**UNITED STATES DISTRICT COURT**  
for the \_\_\_\_\_

In the Matter of the Search of \_\_\_\_\_ }  
(Briefly describe the premises to be searched }  
or identify the person or natural person }  
to be searched.) } Case No. \_\_\_\_\_

**APPLICATION FOR A SEARCH WARRANT**

I, a federal law enforcement officer or an attorney for the government, request a search warrant and state, under penalty of perjury that I have reason to believe that on the following person or property *(identify the person or describe the property to be searched and give its location)*:

located in the \_\_\_\_\_ District of \_\_\_\_\_, there is now concealed *(identify the person or describe the property to be searched)*:

The basis for the search under Fed. R. Crim. P. 41(c) is *(check one or more)*:

evidence of a crime;

contraband, fruits of crime, or other items illegally possessed;

property designed for use, intended for use, or used in committing a crime;

a person to be arrested or a person who is unlawfully restrained.

The search is related to a violation of:

Code Section \_\_\_\_\_ Offense Description \_\_\_\_\_

The application is based on these facts:

Continued on the attached sheet.

Delayed notice of \_\_\_\_\_ days (give exact ending date if more than 30 days; \_\_\_\_\_) is required under 18 U.S.C. § 3103A, the basis of which is set forth on the attached sheet.

\_\_\_\_\_  
Applicant's signature  
\_\_\_\_\_  
Printed name and title

Sworn to before me and signed in my presence.

Date: \_\_\_\_\_  
\_\_\_\_\_  
Judge's signature  
City and state: \_\_\_\_\_  
\_\_\_\_\_  
Printed name and title

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UNITED STATES DISTRICT COURT  
For the \_\_\_\_\_

In the Matter of the Search of \_\_\_\_\_  
by \_\_\_\_\_  
on behalf of the \_\_\_\_\_  
Case No. \_\_\_\_\_

**SEARCH AND SEIZURE WARRANT**

To: Any authorized law enforcement officer

An application by a federal law enforcement officer or an attorney for the government requests the search of the following person or property located at the \_\_\_\_\_  
(along the person or place for the purpose of \_\_\_\_\_)

I find that the affidavit(s) or any material testimony, exhibits, records, cause to search and seize the person or property described above, and that such search will reveal evidence on person or describe the property to be seized.

**YOU ARE COMMANDED** to execute this warrant on or before \_\_\_\_\_  
in the daytime if on a day in 1998 p.m. or any later in the day or night because good cause has been established.

Unless a copy of this warrant is served on you, you must give a copy of this warrant and a receipt for the property taken to the person law abiding, or their authorized person, the property was taken, or leave the copy and receipt at the place where the property was taken.

The officer executing this warrant, or an officer present during the execution of the warrant, must prepare an inventory as required by law and present it to the \_\_\_\_\_  
in which this District Judge \_\_\_\_\_

☐ Pursuant to 18 U.S.C. § 1303(b)(2), I find that service of this notification may serve as an all-time search limited to 18 U.S.C. § 1303(b)(2) except the date of this, and authorize the officer executing this warrant to delay notice to the person who, or whose property, will be searched or seized until the date of this \_\_\_\_\_  
☐ for \_\_\_\_\_ days or a period of \_\_\_\_\_, the date being \_\_\_\_\_.

Date and time issued: \_\_\_\_\_  
City and state: \_\_\_\_\_

Acid (Rev. 11/12) Search and Seizure Warrant Page 2

Returns		
Case No. _____	Date and time warrant executed _____	Copy of warrant and inventory left with _____
Inventory made in the presence of _____		
Inventory of the property taken and nature of any personal seized _____		
Certification		
I declare under penalty of perjury that this inventory is correct and was returned along with the original warrant to the designated judge.		
Date _____	_____	_____
	Deputy Officer's Signature	Printed name and title

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## BACKGROUND: SEARCH WARRANTS

- 1. Determine timing of execution
- 2. Show PC and get warrant
- 3. Operations planning by team
- 4. Execute warrant & do an inventory
- 5. Execute return before the magistrate
- 6. Review seized evidence
- 7. Return seized evidence when appropriate

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## EXAMPLES: HEALTH CARE FRAUD PC

- **Clinic:**
  - multiple upcoding schemes
- **Clinic:**
  - forging doctor's name on disability exams
- **Mobile physician's home and car:**
  - pill mill case
- **EHRs:**
  - stored in the cloud

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## INTERVIEWS

- Agents commonly attempt to interview employees when the warrant is executed
  - Generally not barred by ethics rules
  - Employee can consult with an attorney prior to providing an interview
- From the Govt's view, best practice is cooperation
- From the defense view, best practice is consultation with an attorney

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## SEARCH WARRANTS: OTHER BEST PRACTICES

- **Govt's perspective:**
  - Agents should be organized and professional
  - Target should cooperate to the extent possible
    - Should consult experienced counsel
- **Defense perspective:**
  - Agents should clearly indicate why they are there.
  
  - Agents should seek to find the person with authority to speak on behalf of the company and coordinate efforts with them.
  
  - Agents should honor the scope of the warrant or any additional consent that is provided.

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## FIVE THOUGHTS FOR A CLIENT TO KEEP IN MIND FROM A DEFENSE PERSPECTIVE

1. How many agents are present on site?
2. What did the agents say about why they are at the company? Are they interested in a particular area, room, computer, etc.?
3. Ask for a copy of the warrant.
4. Who is the agent in charge of the search warrant execution?
5. Who will be the main point of contact from the organization to coordinate with the agents?

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### **Communication**

- Employees must not destroy, alter, or delete anything
- Employees may want to consult with counsel prior to an interview

### **Observations**

- Take note of what is happening
- Identify any privileged materials

### **Documentation**

- Create an index of what was seized
- Develop memorandums from witness interviews

## **BACKGROUND: SUBPOENAS**

- **Types:**
  - HIPAA
  - CID
  - Grand Jury
  - Fed. R. Civ. P. 45
  - Administrative
- **When to use what type? Consider:**
  - Civil vs. criminal
  - Right to Financial Privacy Act
  - Timing
  - Who has access to the responsive information

## SUBPOENAS: BEST PRACTICES

- **Govt's perspective:**
  - Consider engaging experienced counsel
  - Contact govt ASAP re cooperation and timing
  - Consider rolling production
  - Electronic usually preferred format
  - Don't hesitate to ask for an extension of time
  - If you have questions, always ask
  - 100% compliance is mandatory absent court order

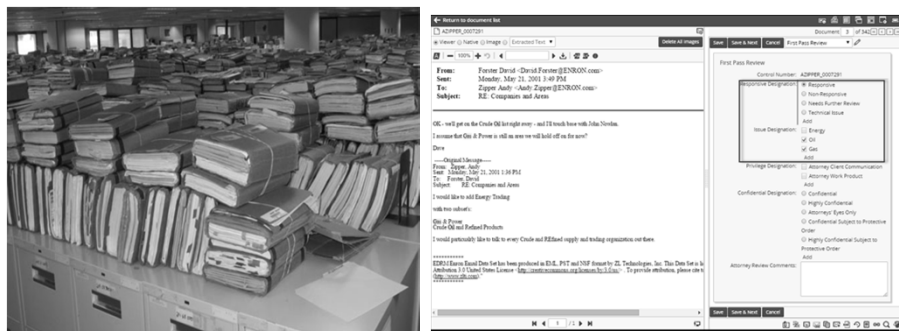
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## SUBPOENAS: BEST PRACTICES

- ❑ **Defense Perspective:**
  - ❑ Information Governance – know where your information is stored within your company (ESI, archives, and other user generated information)
  - ❑ Contact your attorney
  - ❑ Preserve data – litigation holds should be sent; deletion protocol routines should be suspended; identify potential custodians of responsive information
  - ❑ Your attorney will coordinate with the government regarding the subpoena and the scope/categories of information requested
  - ❑ Develop a plan for gathering and reviewing the data (formats for the production, use of review tools for reviewing data, implementation of search terms, etc.)
  - ❑ Review and produce the information based on established parameters with the government (consider a rolling production schedule if the volume is high)

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## CONSIDER REVIEW TOOLS



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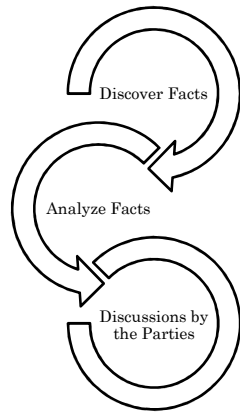
## WHAT HAPPENS NEXT

- **Govt might:**
  - Assess potential for civil, criminal, both, or none
  - Do an SVRS medical review
    - Extrapolate to estimate damages
  - If it is a qui tam, obtain a partial seal lift
    - Get defendant's side of the story
  - Meet with defendant to present "prosecution by PowerPoint"

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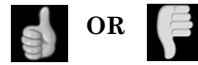


## HOW THINGS PROGRESS



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**DECISION  
ON HOW TO  
RESOLVE  
ISSUES**



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## QUESTIONS ???



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## CONTACT INFORMATION

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