

**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.
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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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**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

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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



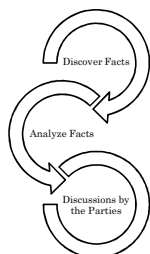
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WHAT HAPPENS NEXT

- **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"

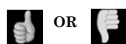
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HOW THINGS PROGRESS



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**DECISION
ON HOW TO
RESOLVE
ISSUES**



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QUESTIONS ???



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