



Ep. 06: Search Warrant Protocol: Stop a Bad Day from Getting Worse

August 6, 2020

When agents knock on your door with a search warrant, you've already had a bad day. With a few simple tips, you can keep it from getting a whole lot worse.

Dan Plunkett: I'm **Dan Plunkett**, a partner in the McGlinchey Stafford New Orleans office, specializing in white collar crime and government investigations. With me today is the head of our group, **Bob Driscoll** from Washington DC. Good morning, Bob.

Bob Driscoll: Morning, Dan.

Dan Plunkett: When federal agents knock on your client's door with a search warrant, they've already got a problem. But I think we can give them some good advice and some easy-to-recall steps that will help them from turning a problem into something much more serious -- say, an obstruction of justice charge.

Bob Driscoll: That's right, Dan. To use one analogy, I think early on in this process for folks to take away is -- this is one of those situations in the law where (if you're a baseball fan like I am) you're in the field. You can't score any runs. You can't defend your case. At this time of the search warrant, all you can do is prevent the government from scoring, or keep them from scoring as many runs as they otherwise might. And so I do think there's a "first do no harm" principle here, which we can discuss more. But that's the main thing to think about -- this is not when you're going to win the case.

This is one of those situations where... if you're a baseball fan, you're in the field. You can't score any runs. You can't defend your case... all you can do is prevent the government from scoring.

Dan Plunkett: I think that's a good analogy. So if we're thinking about playing defense, I think the first thing we want to do is gather information. We want to know who our opponent is. And

with a search warrant, when they come knocking, you want to find out what agency is at your door. Who's the lead agent for the process? Get a copy of the warrant, read it, review it. There are particular rules in place for when search warrants can be executed, what time of day. And they're also very restricted as to the places where the agents can search. And without that information, you're swinging in the dark.

You never want to resist a search warrant. Your lawyer can do that for you later, if the search warrant is improperly granted for whatever reason.

Bob Driscoll:

Exactly. I think that's a great point, Dan. That's one thing you can do in the information gathering stage, in addition to getting the names and as much information as you can, hopefully business cards, from every agent who's accessing your space. You also want to take a close look at the search warrant, get yourself a copy. And make sure to the extent you can, that you limit your agreement to the search warrant, to the terms of the search warrant. You never want to resist a search warrant. Your lawyer can do that for you later, if the search warrant is improperly granted for whatever reason. But if a warrant says you can search the warehouse and it doesn't say you can search the adjacent office building, you ought to point that out to the agent in charge, in a polite manner, in a way to prevent them from searching it. And you certainly don't want to respond in the affirmative to a question. "Do you mind if we go in here as well?" Because at that point you will have waived your right to object to the search and the government may... or at least made it hard for your lawyers to object later.

Dan Plunkett:

Well, that's a classic. The federal agents are very well trained to take as much as you'll give them. And one of the classic exceptions to the need for a federal warrant is a voluntary search. So by saying, "no, I don't mind if you go in my boss's office," you've probably consented to that search. Do you advise that whoever is taking the lead for the client document what's going on?

Bob Driscoll:

Oh, for sure. I think that again, you're mainly getting information for your lawyers to handle later. You want to document everything you can think to document, but in particular, as you said, Dan, the names of the agents involved, who they're with, what agency. Are they state or federal? What is the basis for the warrant, if that's available. Oftentimes you won't get the search warrant affidavit, but ask. And if they can give it to you, it's great to have. You want to get an inventory of what's taken. They should give you that as a matter of policy, but you always want to ask, so that you know exactly what was taken and you have a good list of pieces of information to sit down and start putting together the puzzle with your attorney when things calm down a little bit.

Dan Plunkett:

And by taking those notes, if there is any question whether or not areas beyond the warrant were searched, you can make the distinction between "Object A was found in a searchable proper area, but Object B was found in another room beyond the scope," and your lawyer can then make that argument in court.

Bob Driscoll: Exactly. And actually, you raise a great point just to interject here, Dan. Obviously when you're dealing with the men carrying sidearms with big block letters on their windbreakers, you're not stopping them from going anywhere they want to go, because you can't. You are simply noting your objection if you think they're searching somewhere there's not justified by the search warrant, and making a note of it, Dan, as you just said. We're never going to want to stop, which gets us to what I think you were probably gonna raise: the question of obstruction of justice, and how do you avoid turning a bad situation worse, by drawing an obstruction charge when the government searching your place.

Dan Plunkett: That's what I always mean about making a bad day much worse. The reason that they're there with a search warrant is because they think that there is evidence that could be destroyed, hidden, et cetera, before other processes might work. So by standing in their way and trying to limit them from entering into a space or taking a file or a computer, you may have obstructed justice. And unlike a civil proceeding where you'll probably go through several rounds of increasingly nasty letters from lawyers asking you to produce something, federal agents tend to skip right toward the obstruction charge.

So by standing in their way and trying to limit them from entering into a space or taking a file or a computer, you may have obstructed justice.

Bob Driscoll: I think that's right. And Dan, along those lines, how do you advise clients to handle their employees that are there? Most of us wouldn't feel comfortable letting unsupervised FBI agents wander around the office. Should you just send everybody home? And what if the FBI or the locals ask you, "can we talk to your employees while we're here?"

Dan Plunkett: That is the number one question I think that we get from clients served with a warrant, is how to handle those interviews because it's a potentially tricky situation. First, the point is, even if you as the lawyer are on the scene, you don't represent those employees. You only represent the entity. So you're not in a position to dictate to them what they do or don't do. Your advice should simply be, or your advice to your onsite representative should be, to tell the employees that they're free to talk to the agents, but not required to do so. And that they are free to refuse to be interviewed right then, or they can ask to be interviewed later, or they can say, they'll never submit for an interview. But the company shouldn't be in the position of telling the employees what to do.

Bob Driscoll: And what would you say that even with respect to what I might perceive, if I'm a client, as favorable testimony, if I say, "Oh, well, you should go talk to Joe in the loading dock. He'll explain this whole thing. I sense this might be a problem, but go talk to Joe. And he can clear this up right away." Is that a smart move? Hoping you can nip it off in the bud and the agent will understand and then go away?

- Dan Plunkett:** I don't think there's been a documented case in history where the agents have said, "my bad, we're going to leave now." Your lawyers can always clear it up later. Now's not the time. Bite your tongue. The only thing you should be saying to the agents is, "we're here to cooperate with you. We will instruct our personnel not to impede or obstruct you in any way, but our cooperation is not consent for you to exceed your warrant." And that's it.
- Bob Driscoll:** And what happens when Channel 4 local news arrives on the scene, or you get a call from the local newspaper saying, "we hear there's been a search warrant executed?" Or sometimes, you know, if one's a real skeptic about the government, sometimes there appears to be some real coincidence is when the media seems to arrive 30 seconds after the government with the search warrant -- almost as though the media had prior knowledge of the search going in and wants pictures of the search on the evening news. How do you recommend people discuss the case or not with media when there's a search going on?
- Dan Plunkett:** Again, it's not the time to win your case. You're in the field, you're on defense with the media as well. And so your statement to the press should be limited to, "There are agents present, they're engaged in law enforcement activities. The company is cooperating. Any further information about the warrant will have to come from the government."
- Bob Driscoll:** Dan, I was wondering, you know, these are all some good tips that we're going over. Do we have something concrete we can give people, so that they could stick it in their desk and remind themselves of this conversation, if they ever do have that unfortunate day when the windbreakers are at their door?
- Dan Plunkett:** Yeah. We prepared some time ago, a [search warrant protocol](#). It's a laminated card, about the size of a half-sheet of paper, that we recommend that clients put at their guard shack or the reception area of all of their facilities. The chances are they will never need it. But if someone does come knocking, it's a quick, handy way to avoid a problem getting a whole lot worse. We're happy to send those out to anyone who wants one.
- Bob Driscoll:** Right. And those have our numbers on them as well, so they'll be able to say their lawyer's on the way.
- Dan Plunkett:** Absolutely. And we certainly suggest that you get counsel involved, whether it's us or someone else, because there are a whole lot of ways to turn a bad situation worse. But hopefully with these tips, you can avoid that.

Thanks for tuning into this episode of "More with McGlinchey." If you have a question or would like to propose a topic, we'd love to hear from you at podcast@mcglinchey.com. For additional resources on this topic, please visit mcglinchey.com. On behalf of the law firm that brings you more, we hope you'll join us next time.



Robert N. Driscoll
Member, Washington, DC
(202) 802-9950
rdriscoll@mcglinchey.com



Daniel T. Plunkett
Member, New Orleans
(504) 596-2778
dplunkett@mcglinchey.com

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Search Warrant Response Protocol

Gather Information:

1. Identity of lead agent
2. Agencies involved
3. Name and contact info for lead Assistant U.S. Attorney
4. Search warrant
5. Search warrant affidavit, if possible

Review Search Warrant:

1. What/where to be searched and crimes being investigated
2. What searching for
3. Expiration date
4. Hours of execution

Contact Legal Counsel:

Provide warrant (and affidavit) and agent/AUSA contact info

Document the Search:

1. Agents' activities, including treatment of employees
2. Areas searched
3. Items seized (request inventory)

Communications with Agents:

1. DO advise them about privileged information
2. DON'T obstruct or impede the search
3. DON'T consent to the search and the seizure of anything
4. "The Company will cooperate with you and we will instruct our personnel not to impede or obstruct your search in any way. Our cooperation should not be taken as consent."

What to Tell Employees:

1. You are free to talk to agents, but not required to do so
2. You can refuse or ask to be interviewed later
3. The Company cannot advise you whether/when to talk
4. Company counsel does not represent you, but you have a right to consult counsel
5. If you talk, you must be completely truthful. Do not speculate.
6. DON'T alter/destroy any documents or evidence (tangible or electronic).

What to Tell the Press:

"Agents are present and engaged in law enforcement activities. The Company is cooperating. Any further information should come from the government."

contact

Daniel T. Plunkett

m (504) 701-4167 t (504) 596-2778
dplunkett@mcglinchey.com

Robert Driscoll

m (703) 850-5058 t (202) 802-9950
rdriscoll@mcglinchey.com

