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## When 'The Law' Is in the Lobby:

### Practical Steps to Manage A Raid by Gov't Agents

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It is 7 a.m. You grab a cup of coffee and head out the door to catch the train to your job as in-house counsel. As you take your seat on the train, you pull out your BlackBerry to review your calendar. Meanwhile, in a nondescript parking lot, a group of FBI agents are readying for their day's work as well ... the execution of a search warrant at your company.

The lead agent phones the U.S. attorney's office to go over the details of the warrant one last time, while subordinate agents busily check their weapons and don their trademark blue and yellow warrant jackets. As you are stepping off the train, the agents are stepping out of their black SUVs. When you get to the office, you realize that this will be no ordinary day. The FBI is here, and agents are swarming like locusts throughout the building. Agents are rifling through filing cabinets, firing off a barrage of questions to your employees and hauling what seems like a continuous stream of boxes out the door, while people on the street are taking videos and pictures on their phones and publishing them on Facebook.

Welcome to a government raid.

It is a scene that plays out countless times across the country each year. What a company does — and does not do — in the early moments of such a visit and as the search is being conducted likely will have profound consequences for the company. Knowing how to handle this situation is essential. This article offers practical steps you can take when government agents come to serve a search warrant so that you can better manage what may seem like an unmanageable situation.

To most, dealing with law enforcement is unfamiliar and stressful under any circumstance. When serving a search warrant, however, law enforcement agents may add to this stress by coming heavily armed and using military-type "shock tactics." Agents may feel the need to launch a search quickly and without warning

to prevent the destruction of documents or the hiding of evidence. Even so, being subject to a search warrant does not completely eliminate the rights of the person or company being searched. Complying with the law while knowing and asserting your rights will allow you to respond successfully to a search of your company.

The only way to handle this situation competently is to ensure that you and other employees are ready and calm. While the presence of a sizable group of armed law enforcement agents can be overwhelming, not being prepared for a search situation can have disastrous effects on a company's well-being. Take the time now to form a crisis management team, develop a response plan, draft an e-mail to all employees so it is ready to distribute at a moment's notice, and train key employees to manage the execution of a search warrant.

Above all, never consent to a search. Consent could later be used to allow the use of evidence that was seized improperly or was outside the scope of the warrant. While a valid warrant does give law enforcement agents the right to be there and seize certain materials, it also limits the scope of the search. Any consent could be used later to circumvent that limitation.

When agents arrive to conduct a search, your first step is to identify them and the target of the search. Find out what individuals and agencies are involved. Identify the lead agent and get his or her name, title, phone number and business card. Ask to see the agents' credentials or badges. If the company has a security policy, ask the agents to sign in just as you would any other visitor and, if possible, to wait for in-house or outside counsel to arrive. This will not only give you a list of all the agents involved, but also slow down the process and provide you an opportunity to notify outside counsel and members of the crisis management team.

Ask for a copy of the warrant and read it carefully. You are entitled to receive a copy of the warrant under Fed. R. Crim. P. 41(f)(1)(C) and Pa. R. Crim. P. 208(A). Do not allow the agents to begin the search without providing you with one. The warrant should list the exact premises to be searched and the items to be seized, and it may contain time limitations on conducting the search. It should list and be signed by the issuing authority, usually a judge. Check all of this information carefully. If the warrant is deficient in any way, including listing an incorrect address, tell the agents to leave, then immediately contact the person who issued the warrant. If all of the information is present and correct, however, you are obligated to comply with the terms of the warrant.

Notwithstanding this legal obligation, you can — and should — control as much of the situation as possible. Instruct the agents that they should not interview employees without the company's lawyer being present. Send non-essential employees home to prevent officers from attempting to interview them. If you wait until after the search has commenced, employees may need permission from the agent in charge before leaving. Inform the employees who remain that the agents may try to ask them questions. Let employees know that they have the right to decline to be interviewed, but if they consent, they have the right to have a lawyer present. Let them know that in-house and outside counsel will be available in a conference room to address any concerns during the search. Again, you should have a draft e-mail containing this information and explaining employees' rights ready to distribute should a search warrant be served.

Monitor the agents once they have commenced the search. If possible, assign the agents to a conference room or office, and ask them to limit their activity to this location as much as possible to avoid disrupting business. Assign designated employees to assist agents in locating documents. Take copious notes as to places searched, employees talked to, things said, and questions asked. Get copies of documents that are essential to carry on business. Protect information that you believe is privileged or outside of the scope of the warrant. If you believe the agents are improperly seizing privileged material, such as attorney-client communications or trade secrets, object to the lead agent and make a note of your objection.

Remember, do not interfere with the search even if the agents seize items you believe are protected or outside the scope of the warrant. Any interference could be seen as obstruction of justice. Simply object to the seizure of the items and note your objection. This will lay the foundation for later contesting the seizure in front of a judge, and it may be used to establish a case of agent misconduct. When the search is

complete, you are entitled to an inventory list of all seized items. However, do not sign the inventory list or anything suggesting that it is complete and accurate.

Nobody wants to see their company be the target of a government investigation and search. We all like to think that our employers or our companies are above reproach. However, those who do nothing to prepare for this possibility, believing it will never happen to them, will be in the worst position to respond to and mitigate the effects of a government raid. On the other hand, those who have a response plan in place and are prepared to control and monitor the search once it commences will be in an excellent position to minimize the damage done by the execution of a search warrant. •

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