



**MILES &  
STOCKBRIDGE**

**Holly Drumheller Butler**

**Sasha Hodge-Wren**

**The Government is Knocking.  
Do you need to open the door?**



# Why Me?

## Reasons for Government Contact Vary

- Contract audit
- Result of targeted investigation
- Industry-wide scope investigation
- Anonymous tip/whistleblower
- Qui tam complaint or other civil litigation
- Significant financial reporting issues



# Methods of Government Outreach Vary



- Letter
- Subpoena
- Civil Investigative Demand (CID)
- Agent/Investigator/Auditor "Visit"

Or . . .

# Search Warrant—the Nuclear Option



A search warrant issued by a court grants law enforcement the right to search a location and seize certain items.

# UNITED STATES DISTRICT COURT

for the  
District of Maryland

In the Matter of the Search of  
*(Briefly describe the property to be searched  
or identify the person by name and address)*

Baltimore City Hall, Room 250  
100 N. Holliday Street  
Baltimore, MD 21202

)  
)  
)  
)  
)

Case No. **19-1474 JMC**

## 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 in the \_\_\_\_\_ District of \_\_\_\_\_ Maryland  
*(Identify the person or describe the property to be searched and give its location):*

See Attachment A-5 which is attached hereto and incorporated herein by reference.

I find that the affidavit(s), or any recorded testimony, establish probable cause to search and seize the person or property described above, and that such search will reveal *(Identify the person or describe the property to be seized):*

See Attachment B-5 which is attached hereto and incorporated herein by reference.

**YOU ARE COMMANDED** to execute this warrant on or before 5/6/19 *(not to exceed 14 days)*  
 in the daytime 6:00 a.m. to 10:00 p.m.     at any time in the day or night because good cause has been established.

Unless delayed notice is authorized below, you must give a copy of the warrant and a receipt for the property taken to the person from whom, or from whose premises, 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 promptly return this warrant and inventory to \_\_\_\_\_  
Duty Magistrate Judge  
*(United States Magistrate Judge)*

*Mc 4/22/19*  
Pursuant to 18 U.S.C. § 3103a(b), I find that immediate notification may have an adverse result listed in 18 U.S.C. § 2705 (except for delay of trial), and authorize the officer executing this warrant to delay notice to the person who, or whose property, will be searched or seized *(check the appropriate box)*

for \_\_\_\_\_ days *(not to exceed 30)* *Mc 4/22/19* until, the facts justifying, the later specific date of \_\_\_\_\_

Date and time issued: 4/22/19 3:30pm

City and state: Baltimore, Maryland

  
\_\_\_\_\_  
J. Mark Coulson, U.S. Magistrate Judge  
*Printed name and title*

# What Do I Do Now?

# Step One: Your Point Person

# Contact Your Attorney



## **In-House or Outside Counsel**

- Experience with Government Investigations
- Attorney-Client Privilege Considerations
- Immediate Actions to Take

# Key Management Point of Contact



Two goals:

1. Maintain calm
2. Control flow of information

# Step Two: Verify

# Verify and Read

1. Verify agent's credentials
  - ***Beware of Fraudsters***
2. Scrutinize the warrant
  - Any defects?
  - Scope?

# Step Three: Thin the Herd

# Non-Essential Employees Should Be Sent Home



- Provide Warnings and Advice
- Provide advance training, especially to front desk personnel

# Step Four: Monitor the Search

# Monitor

- Do not antagonize
- Be cooperative, but you do not need to answer agent's inquiries or engage in a dialogue
- Track search and seizure



## **Remember**

There is no such thing  
as a casual conversation  
with the Government.

# Step Five: Document

# Document

## *PROMPTLY*

- Make a post-search memorandum
- Interview employees who dealt with agents and memorialize

# Step Six: Communicate

# Communicate

- Internally
- Externally
- With the Government

# Step Seven: Investigate

# Internal Investigation

If the search warrant suggests wrongdoing by the company (*as it almost always does*), legal counsel should conduct a confidential, privileged internal investigation.

# Put Your Antennae Up

- Financial improprieties — fraud, embezzlement, tax issues
- False Claims Act exposure (G.C.; Health Care)
- Referral issues for health care clients (Stark Law; AKS)
- Criminal allegations
- “Market Integrity” — cybersecurity or elder fraud



# Document Hold

- Company must not obstruct or interfere with the investigation.
- Do not destroy or alter any relevant records.
- Consider parameters and recipients of hold.



# Internal Investigation Results



If wrongdoing is found:

- ▶ Determine a strategy
- ▶ Implement corrective actions
- ▶ Institute a compliance policy to ensure issue not repeated in future
- ▶ Evaluate obligations to disclose

# Hypotheticals

# #1: How far can they search?

Do you:

- a. Refuse and block access.
- b. Refuse, block access, and call GC/legal counsel.
- c. Open the door, knowing that they will just be back with a corrected SW. No point in wasting time and cooperation may go a long way with the investigation.



## #2: What happened to attorney-client privilege protections?

Do you:

- a. Intervene. The offices include materials that are privileged and are entitled to protection.
- b. Observe and stop seizure only of A/C privileged documents, not other files.
- c. Allow search.



# #3: Can I still run my business?

Do you:

- a. Delay the seizure while you make copies of the necessary documents.
- b. Request duplicates be made on-site for you to keep.
- c. Allow the government to take your necessary files and hope for the best.



## #4: Oops, found more responsive documents.

Do you:

- a. Trash the contents and enjoy the rest of your night. The Government has already gotten all they need.
- b. Copy the contents; call GC; arrange to disclose to Government.
- c. Do nothing. You have no obligation to disclose items in your personal belongings.



# #5: Can we talk?

Do you:

- a. Continue to answer questions as agreed. It shouldn't last much longer.
- b. Stop interview and ask for a lawyer.
- c. Ask to reschedule the interview so you can research the answers and feel more comfortable with your responses.



# #6: Can I have your password, please?

Do you:

- a. Give the Agents the passwords. They will eventually open the devices. No use in prolonging the inevitable.
- b. Open the devices while Agents are on-site, but don't give them the passwords.
- c. Call GC. Do not give out passwords.



# Proactive Protections

# Preparation is Imperative

- Written plan
- Employee training
- Practice exercise for key management

# Questions?



**Holly Drumheller Butler**, Principal  
hbutler@milesstockbridge.com  
410.385.3829



**Sasha E. Hodge-Wren**, Counsel  
shodgewren@milesstockbridge.com  
202.465.8424



Miles & Stockbridge is a leading law firm with more than 220 attorneys and offices in the mid-Atlantic region, including offices across Maryland, Washington, D.C. and Virginia. Our lawyers help global, national, local and emerging business clients preserve and create value by helping them solve their most challenging problems.

**[www.mslaw.com](http://www.mslaw.com)**

**Twitter: @mstockbridgelaw**

*The opinions expressed and any legal positions asserted in this presentation are those of the author and do not necessarily reflect the opinions or positions of Miles & Stockbridge P.C. or its other lawyers. No part of this presentation may be reproduced or transmitted in any way without the written permission of the author. Images are subject to copyright. All rights reserved.*