



Search Warrants: Mistakes Can Be Prevented

Includes sample search warrant checklist



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Article Source: http://www.patc.com/weeklyarticles/search_warrants.shtml

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One of the most sacred obligations of the United States Constitution is that it guarantees that citizens of our country have the freedom to live in their residences without fear of government intrusion into the boundaries and sanctity of their residences. This guaranty of our constitution is specifically detailed in the Fourth Amendment, which normally requires (unless exceptions) that law enforcement officers obtain a warrant, and be approved by a judge before they can enter a residence to arrest an individual or search their residence. The Fourth Amendment to the US Constitution reads in part, "... The right of the people to be secure in their person, houses, papers, and effects against unreasonable searches and seizures shall not be violated." Thus all citizens are protected against searches and seizures that are not carried out according to law.

The purpose of this article is to prevent any law enforcement agency involved in the execution of a search or arrest warrant from accidentally serving the warrant at the wrong location. The consequences of a "wrong house raid" not only potentially exposes the officers and the agencies involved to legal liability but may traumatize innocent citizens, expose all involved parties to potential danger, and may jeopardize the success of an investigation.

Law enforcement agencies should consider establishing a policy which requires their officers to complete a checklist to prevent avoidable mistakes when executing a search warrant, and force responsible supervisors to complete a risk assessment of the potential danger the execution team will encounter. This policy should also establish accountability in the event there is a "wrong house raid" and should include exact procedures to follow in the event of a wrongful warrant execution.

Recent events in several cities resulted in tragic consequences that may have been preventable. In Atlanta on November 21, 2006, 92 year old Kathryn Johnston shot at officers serving a search warrant on her residence. The officers returned fire, killing Ms. Johnson. It was later determined the officers executed the warrant based upon bad information and then planted narcotics in the house to cover-up the shooting.¹

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Another tragedy occurred in Lebanon Tennessee in October, 2000, when officers shot and killed John Adams. Adams threatened the officers with a firearm as they entered his residence serving a warrant. Police later indicated they intended to raid the house next door.ⁱⁱ

In Hornlake, Mississippi, on March 23, 2006, an elderly couple was hospitalized after police burst into their home thinking it housed a methamphetamine laboratory. The incident occurred about 4 a.m. An agency spokesman said it was the right address but the wrong house. Police confirmed a heavily armed Tactical Apprehension Containment Team stormed the house. Police stated they had good information from a reliable source that had been backed up by a purchase of narcotics linked to the address. However, when they arrived at the designated address, there were two houses on the lot. They hit the larger of the two houses. "It was the wrong house," police said. The house was totally dark and the TACT members went through to the bedroom looking for the suspects. A man and a woman, both in their 80s, were injured as TACT team members secured the house, although no drugs were found. There were children in the house also, but they were not awakened, according to police.ⁱⁱⁱ

A search warrant can be defined as a written warrant issued by a judge or magistrate who authorizes the police to conduct a search of a person or location for evidence of a criminal offense, and seize the evidence. Under the Fourth Amendment, most residential searches by the police require a search warrant, based upon probable cause. The Fourth Amendment states that "...no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized"^{iv} Probable Cause for a search warrant demands that the facts available to the officer would warrant a man of reasonable caution to believe that specific items of contraband, stolen property or other evidence of a crime are located in the residence. An application for a search warrant need only "enable the judge to conclude that it would be reasonable to seek the evidence in the place indicated..."^v Some factors to consider in the use of a search warrant include the opportunity of an extended search; the possibility of synchronized searches at several different places; favorable notion on court and jury; and possibly determining the lawfulness of the search in advance.

Unlike probable cause to arrest, probable cause to search often grows sour rapidly. The fact that there is probable cause to believe that evidence is present at a location today does not necessarily mean it will still be there tomorrow or next week. This is why it is crucial, especially when executing a narcotics search warrant, that the investigators ensure that the probable cause which led them to secure the warrant is still valid prior to execution. For example, if they purchase narcotics from a residence on Friday, and execute the warrant on the following Monday, it is possible that the person who sold the narcotics could have moved out and an innocent family could have moved in prior to the execution of the warrant. This would be a situation in which the probable cause should be "freshened up" prior to execution by making another purchase just prior to execution.

In conclusion, a high degree of supervision should be on the scene of every high profile, tactical entry warrant. The responsible supervisor should ensure that the search warrant has been obtained with precise detail describing the dwelling to be searched, and ensuring the tactical plan prioritizes the safety of all involved. The lead case investigator should be designated as the administrator of the warrant to include gathering intelligence on the target site and the surrounding target structures and neighborhood. The lead investigator should collect the relevant information on the capabilities and background of suspects (including criminal histories, criminal records, and violence capabilities), determine the best time and date for execution, determine equipment as well as personnel requirements, secure the actual search warrant,

and ascertain its accuracy. The supervisor should approve the warrant by signing the checklist, or reject the warrant if any defects are discovered.

Recommendations

1. It is recommended that law enforcement agencies develop a checklist, similar to the example at the end of this article, developed by PATC which requires a high level of supervision and accountability prior to the approval of a no-knock, tactical entry warrant.
2. It is also recommended that law enforcement agencies establish a policy to require more accountability, including the implementation of a checklist to prevent a “wrong-house raid.” This policy should include exact procedures to follow in the event of a wrongful warrant execution. The after action procedures following the realization that a wrongful warrant execution has occurred, should include steps to make the occupants whole, when appropriate, including:
 - Providing medical treatment to any of the injured parties at the agency’s expense.
 - Repairing any damage which may have occurred to the dwelling during the wrongful warrant execution.
 - Financial support in providing alternative housing while the dwelling is being repaired, i.e., windows and doors repaired and de-contamination of any gas deployment.
 - Having a ranking supervisor meet with the injured parties and apologize and ensure all concerns are addressed.

Risk Assessment is extremely important to the safety of all involved parties and should be analyzed and considered as an item reviewed on the checklist. Failure to utilize a well-trained, well armed tactical team which is equipped with the appropriate heavy duty body armor could result in avoidable injuries and even death to members of the warrant execution team.



CITATIONS:

ⁱ CNN.COM, November 27, 2006.

ⁱⁱ CNN.COM, October 06, 2000.

ⁱⁱⁱ FOXNEWS.COM, March 23, 2006.

^{iv} IACP Model Policy, Executing Search Warrants.

^v IACP Concepts and Issues Paper, Executing Search Warrants.