Practical Considerations in Responding to Subpoenas and Search Warrants

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Table of Contents

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Introduction

Veteran white collar criminal defense attorneys can provide a litany of horror stories in which seemingly inconsequential underlying conduct resulted in serious charges of obstruction of justice because of a poorly organized or supervised response to a subpoena or to the execution of a search warrant. Subpoenas and search warrants are a rare occurrence for legitimate healthcare providers. Consequently, legitimate healthcare providers are caught unprepared in the face of a well prepared law enforcement team.

This article will hopefully provide practical considerations and steps to take in preparing for the anxious moment when a FBI agent hands your client a subpoena or a search warrant. This article is not intended to transform a healthcare attorney into a white collar criminal defense attorney. Instead, it is offered to sensitize the healthcare practitioner to the important concerns to address in this oftentimes harrowing experience by focusing the practitioner on key issues and helping to put a mechanism in place to address the process and minimize mistakes and misunderstandings.

Subpoenas

Rule 17 of the Federal Rules of Criminal Procedure (FRCrP) identifies two types of subpoenas – a *subpoena ad testificandum* requiring a witness to appear before the Grand Jury and testify, or a *subpoena duces tecum* directing the recipient to produce books, papers, or other objects designated therein.

Subpoena Ad Testificandum

Subpoenas ad testificandum are issued for witnesses to appear and testify before a Grand Jury. Grand Jury proceedings are secret and an attorney cannot accompany his client into the Grand Jury room. There is virtually no situation under which an experienced criminal attorney will allow his client to appear and testify before a Grand Jury. The Fifth Amendment protection against self-incrimination is available and, with rare exception, should be asserted. Obviously, there are business ramifications to the assertion of the Fifth Amendment privilege and these should be discussed with the client. However, the most important consideration is to avoid providing any information which further entangles your client in a criminal investigation. The Grand Jury investigation has probably already uncovered a great deal of information. An unprepared witness who testifies under oath will help to fill investigation gaps or inadvertently offer inconsistent or mistaken testimony which may appear to be perjurous or later proven to be false. The Fifth Amendment was incorporated in the Bill of Rights to protect citizens. Use it.[1]

Subpoena Duces Tecum

Although subpoenas are issued through the court, they are controlled by the prosecutor's office. They are issued in the name of the Grand Jury. However, they are prepared and drafted by Assistant U.S. Attorneys (AUSA) who control compliance therewith.

A *subpoena duces tecum* can call for virtually anything. Documents may include accounting documents, payroll records, corporate financial records, bank records, contracts and related documents. Significantly, in today's world, subpoenas often call for computer records. The Department of Justice has a website with extensive guidelines for logistics concerning subpoena of computer hard drives and records.[2] It may be necessary for counsel to coordinate

efforts with the corporate MIS director or other technical consultants. Investigative agencies like the FBI have technical experts in locating, accessing and duplicating computer records. Since it is vital that compliance be accomplished, it is very important to insure that all records called for have been identified and produced. For that reason, a computer consultant may be necessary to ferret out all described documents.

Although there is virtually no Fourth Amendment Protection for subpoenas, there are a number of grounds available to challenge subpoenas. These include challenges for (1) abuse of subpoena process; (2) unreasonable time span; (3) over breadth of subpoena; (4) lack of authority to conduct an investigation; (5) improper purpose of a subpoena, e.g., using a subpoena to gather evidence for a civil proceeding or to harass a witness; or (6) improper use of subpoena to compel a witness to appear before the U.S. Attorney for an interview outside of a Grand Jury. Prosecutors are given wide latitude and, with rare exception, most subpoenas will withstand motions to quash.

Receipt of *Subpoena Duces Tecum*

It is important that procedures are in place prior to receipt of a subpoena so that counsel will be notified immediately and can take steps to insure that no documents are destroyed, altered, discarded or created and that compliance is properly completed.

Areas of Concern

Employees should be sensitized to the fact that in the healthcare industry there are numerous national initiatives conducted by the Office of the Inspector General (OIG) of Health & Human Services (HHS). The OIG also issues fraud alerts for areas of possible abuse. Receipt of a subpoena does not mean that the client has done anything wrong. Employees in important positions should be sensitized to areas that the government is exploring. The OIG provides fraud alerts and other information indicating areas to which healthcare providers should be sensitized. Healthcare periodicals also provide valuable insight into possible problem areas. These resources should be used to sensitize the client to possible problem areas. Knowing that subpoenas may come as a matter of course mandates that counsel set in place policies and procedures to deal with receipt of a subpoena.

Rule Number One

Rule number one is to immediately contact counsel. In-house counsel should inform the possible recipients of any subpoena that counsel should be contacted immediately upon receipt of a subpoena. These individuals should also be informed that oftentimes creative investigators use the service of a subpoena to obtain additional information. Employees should know their rights with respect to submitting to interviews and providing information to these agents.

The subpoena itself will provide a great deal of information which may shed light on areas of inquiry or the agencies involved in the investigation. Usually the subpoena will identify the AUSA and the investigative agency (FBI, OIG, Postal Inspector, etc.). A review of the subpoena may indicate when the Grand Jury was formed, the subject matter of the investigation and the statutes which were possibly violated.

The AUSA who heads the investigation is usually listed on the face of the subpoena. It is important for knowledgeable counsel to make immediate contact with the AUSA and

determine the parameters of the investigation and any other information which that AUSA is willing to share with counsel. It is a good practice to memorialize any conversations with AUSAs. This is especially true where the AUSA has indicated that he or she has no indications of wrongdoing by the client or that the client is not a "target or subject."[3] Counsel should treat everyone as a possible subject of an investigation. Obviously, identification of your client as a target or subject means that the Grand Jury has focused on your client. The fact that your client is not a target or subject does not mean that they will not be prosecuted if information is uncovered demonstrating wrongdoing by that client.

Notifying Employees

All involved employees should be notified immediately that a subpoena has been served. As stated above, it is a good practice to inform employees that service of a subpoena is not unusual. This type of communication is best done through a written memorandum which carefully sets forth the rights and obligations of the employees with respect to the subpoena. This written instruction should include the fact that no record should be discarded, altered, created or destroyed. The documents described in the subpoena should be identified to the employees and instructions should be made for employees to gather responsive documents. Employees should also be instructed not to discuss the subpoena or any aspect of the investigation with other employees. This is done to avoid creating additional, confusing evidence and should be done in conjunction with instruction to take steps to protect the attorney/client privilege whenever possible. Written instruction should inform the employees in the strongest terms possible that destruction or alteration of records can result in obstruction of justice charges.[4]

Recent legislation to address Enron-type misdeeds has strengthened obstruction of justice statutes. Changes to obstruction statutes have lessened the mental state requirement while broadening the statutes' reach. Sections 1102 and 820 of the new statute provide:

> Section 1102 amended 18 U.S.C. §1512 to make it an offense to corruptly obstruct, influence or impede any federal court, agency or Congressional proceeding, or to attempt to do so, by altering, destroying, mutilating or concealing a document.
>
> Section 820 created a new offense punishing anyone who "knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under title 11." 18 U.S.C. §2529.

Gathering Information

Subpoenas often cover numerous years and involve voluminous documentation. Failure to properly comply with the subpoena can appear to be an obstruction of justice or an indication of a continuing effort to hide incriminating evidence. For this reason, it is vitally important to insure that employees understand the significance of the subpoena and that knowledgeable individuals take all steps necessary to fully and completely comply with the subpoena. Counsel should identify a point person within the company who will act as the "custodian of records." The subpoena may identify an individual as custodian or it may be directed to a generic "custodian of records." There are numerous considerations in identifying a custodian of records. Sometimes it is in the best interests of the client that the person not be familiar with

the activities under investigation. However, the custodian of records must be prepared to testify under oath what steps were taken to gather the information called for in the subpoena.

Depending on the type of documents and their ongoing business significance, different approaches can be taken. The key concern is that counsel needs to identify all documents and take steps to memorialize their production. Subpoenas usually call for originals. The prosecutor can insist upon originals and oftentimes does. This is done because originals may have whiteouts, post-its or other unique aspects which a copy will not provide. However, counsel should immediately initiate a dialogue with the AUSA in an attempt to provide copies so that originals can be kept with the ongoing business. In the area of medical records and the ongoing treatment of patients it is often an important consideration. Property seized by the government still remains the property of the client.[5]

All responsive documents should be copied and bates stamped. These records should be inventoried and indexed as extensively as possible. Counsel should identify any documents which may be protected by attorney/client privilege, work product privilege or other applicable privileges.[6] Obviously, counsel should investigate whether any one of these privileges is applicable to the healthcare practice involved. However, most federal healthcare programs set forth that records will be made available to the federal government. Specifically, Title 42 USC § 1320(a)-7(b)(11) provides that a provider may be excluded from the federal program if he fails to provide information which the Secretary finds necessary to determine whether payments were properly due.

Counsel should attempt to negotiate any aspects of the subpoena. Subpoenas are usually drafted in incredibly broad terms to cover virtually every conceivable document under the sun. A common sense conversation with an AUSA in which counsel determines exactly what the prosecutor is looking for and suggests alternative ways of providing the information is totally acceptable (that is assuming there is a "reasonable AUSA," which some defense attorneys believe is an oxymoron.). Broadly drawn subpoenas can call for literally millions of documents. It is important to determine the parameters of the documents called for in the subpoena. Prosecutors are looking for significant evidence. They do not want to spend all their waking hours reviewing unnecessary documents. For this reason, it is important to open a dialogue and attempt to limit the scope of the subpoena. Prosecutors will also usually be reasonable with respect to time constraints for the return of the subpoenaed materials. In the healthcare field it may be important for counsel to make arrangements for access to or a return of significant documents.[7] No AUSA wants to be accused of causing injury to some patient because subpoenaed information was not available to the healthcare provider.

Internal Investigation

It is important for counsel to use the subpoena as a springboard to the conducting of an independent investigation. Individuals unfamiliar with federal investigations sometimes believe that no news is good news. However, the Grand Jury works in secrecy and an attorney who does not take steps to aggressively uncover the extent of any wrongdoing runs the risk of picking up the newspaper and finding out his client was indicted or in today's world, seeing his white collar client led off in handcuffs.

Although beyond the bounds of this article and the subject of numerous books,[8] the internal investigation should identify relevant documents which have been indexed and identified during the gathering of information for the subpoena compliance. These documents should be

carefully reviewed and analyzed for indications of wrongdoing. Relevant witnesses should be identified and interviewed. These witnesses should be interviewed with a non-attorney witness present. In this way, counsel avoids becoming a witness who may later be removed from the case. Counsel must make clear to any employees that he or she does not represent the individual employee. Counsel should make clear that he or she represents the corporation and that any information derived will be considered by the corporation. The employee should be informed that the attorney-client privilege belongs to the corporation and the corporation may, in fact, choose to waive that privilege at some point. This should be memorialized in the interview notes and made clear to each employee. Witnesses should be instructed in the strongest terms that they should provide truthful testimony and steps should be taken to encourage candor.

Waiver of Attorney/Client Privilege

DOJ Position on Corporate Prosecutions: Holder/Thompson Memos

An important function of outside counsel in conducting any internal investigation is to preserve and protect the attorney/client and work produce privileges. Unfortunately, in the healthcare area possible program exclusion and the availability of other devastating penalties give the government a huge bargaining advantage in reaching a favorable disposition of government investigations. This power disparity has led the government to require extensive cooperation from corporate providers who wish to resolve any matter with the government.

Specifically, many prosecutors are demanding that corporations waive the attorney/client privilege in any circumstance in which the corporation seeks favorable disposition of a government investigation. This position by the government basically requires defense counsel to "gift wrap" its investigation and provide it to the government.

This government position has been memorialized in a June 1999 memorandum from Deputy Attorney General Eric Holder. The Holder memo provides in part that "timely and voluntary disclosure of wrongdoing and its willingness to cooperate in the government's investigation" are factors which are relevant to a prosecutor's decision not to criminally charge the corporation. In particular, the memorandum further provides that:

> "[i]n gauging the extent of the corporation's cooperation, the prosecutor may consider the corporation's willingness to identify the culprits within the corporation, including senior executives, to make witnesses available, to disclose the complete results of its internal investigation, and to waive the attorney-client and work produce privileges." (emphasis supplied)

The Holder memo spoke in terms of discretionary factors which prosecutors should consider. However, in practice many AUSAs simply required waiver of applicable privileges to be a precondition to any agreement with the government.

The government position was recently "clarified" on January 20, 2003 in a memo by Larry Thompson, Deputy Attorney General (Thompson Memo). The Thompson Memo identified circumstances it considered obstructionist, including:

> "overly broad assertions of corporate representation of employees or former employees; inappropriate directions to employees or their counsel, such as directions

not to cooperate openly and fully with the investigation including, for example, the direction to decline to be interviewed; making presentations or submissions that contain misleading assertions or omissions; incomplete or delayed production of records; and failure to promptly disclose illegal conduct known to the corporation."

The Thompson memo was offered by the government as clarification of its position with respect to cooperation. That memo identifies further factors which the government views as significant in making its charging decision. With or without the Thompson 'clarification," it appears that aggressive prosecutors are going to continue to demand that healthcare providers waive available privileges if they wish to receive any benefit or consideration from the government.

In light of the government's position as set forth in the Holder and Thompson Memos, it is important for counsel to take all steps to protect applicable privileges but advise clients that waiver of available privileges may be an eventual outcome.

Act of Production

The Fifth Amendment protects compelled testimony. Careful consideration must be given to the situation where an individual provides documents pursuant to a *subpoena duces tecum* and the act of production may have some "testimonial" aspect. The Fifth Amendment provides very little protection for business records whose production was not compelled.[9] It also does not apply to the corporate entity itself. However, the Fifth Amendment protects the act of production where that act might provide some further information to the government. In *U.S. v. Doe,* 465 U.S. 605 (1984), the Court indicated that the privilege is available where compliance with the subpoena tacitly concedes the existence of papers demanded or compliance establishes their possession or control by the client. The compelled act of production may also indicate the client believes that the papers are those described in the subpoena. In *U.S. v. Hubbell,* 530 U.S. 27, 120 S.Ct. 2037 (2000) the Court held that a defendant who was granted immunity in exchange for his production and disclosure of broad categories of documents responsive to a subpoena precluded the subsequent unrelated prosecution to the extent that the testimonial aspect of the defendant's act of producing documents was a first necessary step in the discovery of evidence supporting the second prosecution. The *Hubbell* court likened the act of production to providing the government with the combination to a wall safe. Since the act of production identified which documents were responsive and identified various documents, it was clearly a testimonial act which required Fifth Amendment protection.

Counsel should very carefully consider whether the custodian of records is the subject of the investigation or has criminal exposure. If the subpoena does not call for a specific individual, then the choice of the corporate custodian should very carefully consider the act of production issue described above. Steps should be taken to insure that whoever provides information to the Grand Jury does not unwittingly provide a link in the prosecutorial chain by providing testimony linked with the evidence.

It is always a good practice to avoid presenting witnesses before the Grand Jury. If informal production of the records can be accomplished, this should be done. Oftentimes prosecutors will allow the records to be produced to an FBI agent or other law enforcement individual. Counsel should take this opportunity and avoid any contact between an agent and employees of the client. Good agents can be very disarming and will strike up a conversation with an

employee who may provide valuable information to that agent. For the same reason, it is never a good idea to allow visits to the client's office or contact with employees without counsel's supervision.

Inspector General Subpoenas

The Office of the Inspector General (OIG) of Health and Human Services (HHS) is empowered to require "the attendance and testimony of witnesses and production of any other evidence at an investigational inquiry."[10] The OIG subpoena can be issued for civil, criminal or administrative proceedings. Usually, OIG subpoenas are issued at a more preliminary stage than a Grand Jury subpoena. The OIG is given broad powers to enforce the subpoenas and complete compliance therewith is mandatory.

The same considerations discussed above should be made in complying with an OIG subpoena. However, there is much more procedural latitude in this setting. For instance, defense counsel cannot appear before the Grand Jury. An investigational inquiry pursuant to an OIG subpoena allows a witness to be accompanied and advised by counsel. Counsel may object to questions and the witness is given the opportunity to clarify his or her answer. The witness is also entitled to review the transcript of the proceedings and submit written proposed corrections to the transcript.[11] The OIG subpoena can be enforced in any district court.[12]

Civil Investigative Demands

Two specific statutes have direct applicability in this area. The False Claims Act (FCA), 31 USC § 3733 and the Health Insurance Portability and Accountability Act (HIPAA), 18 USC § 3486 both provide for administrative subpoenas which are referred to as Civil Investigative Demands (CIDs) or Authorized Investigative Demands (AIDs). Much like Grand Jury and OIG subpoenas, there is no requirement for probable cause and they can be enforced by the appropriate district court.[13]

Unlike Grand Jury subpoenas, the CID can compel not only the production of documents but also can require answers to interrogatories and the provision of oral testimony.[14]

CIDs may be issued only before civil proceedings are filed by the government. Once a lawsuit is filed, they may not be used to continue discovery. Interestingly, they can be used after a qui tam whistle blower plaintiff has filed suit and before the government has determined whether to intervene in the matter. *See, generally*, 31 USC § 3733(a)(1).

Although numerous procedural attacks are available, if the CID is within the power of the government, it will usually be upheld. A more practical approach to addressing a CID is to attempt to open a dialogue with the appropriate government official to either limit the request or to come to some accommodation about information to be provided. In the healthcare area, a subpoena calling for medical or billing records can involve literally millions of documents and computer information. For this reason, experienced counsel who has established credibility with the government should take steps to limit the scope or reasonably accommodate both the government and the healthcare provider. Federal district courts are mindful of the conflicting interests in these kinds of investigations and oftentimes they encourage informal accommodation to broad CIDs or OIG subpoenas.

Authorized Investigative Demands (Aids)/Healthcare Fraud Administrative Subpoena

AIDs are a relatively new animal. Title 18 USC § 3486 authorizes the Attorney General and his designee to issue investigative demands for any investigation relating to "any act or activity involving a federal healthcare offense." The AID is another weapon for the criminal prosecutor. It can call for documents and require a custodian of records to give testimony concerning production and authentication of records.

Forthwith Subpoenas

Although forthwith subpoenas are a relatively rare species, they are an incredibly strong law enforcement weapon. Forthwith subpoenas call for immediate production of documents. They require the prior approval of the United States Attorney. According to a prior edition of the U.S. Attorney's Manual, factors to consider for the issuance of a forthwith subpoena are (1) risk of destruction of evidence; (2) possible fabrication of evidence; (3) the need for orderly presentation of evidence; and (4) the degree of inconvenience to the witness.

As a federal prosecutor, the author utilized forthwith subpoenas which were simultaneously served on approximately 30 related healthcare clinics/pharmacies which were involved in a massive Medicaid fraud. In this way, trained law enforcement teams were instructed to serve forthwith subpoenas directing that all documents under the subpoena be produced *immediately*. The law enforcement personnel were also instructed to interview as many personnel as possible and identify all persons present so that follow-up interviews could be conducted. This approach denied the alleged criminal actors the ability to destroy, alter or discard significant indicia of criminal activity. Significantly, issuance of forthwith subpoenas does not require the probable cause standard mandated by the Fourth Amendment or a search warrant.

Search Warrants

The Fourth Amendment protects against unreasonable searches and seizures. The Fourth Amendment and FRCrP, Rule 41, require that reasonable grounds exist to believe that evidence or fruits of a criminal activity are presently located in the place to be searched.[15]

A search warrant is obtained by appearing before an independent judicial officer (usually a federal magistrate judge) and submitting a search warrant describing the things to be seized and the location of those items. The independent judicial officer is provided with a sworn affidavit, usually by law enforcement, which must provide the judicial officer with probable cause to believe that the fruits of criminal activity are presently located in the place to be searched. Searches can also be authorized: (1) incident to a lawful arrest; (2) when items are in plain view; or (3) pursuant to consent.[16]

A deficient search warrant can be saved by the good faith exception.[17] There are numerous bases available for challenging search warrants. Areas to investigate include: (1) an affidavit based on false information; (2) indications that the judicial officer abandoned his judicial role; (3) deficient affidavit not demonstrating probable cause; or (4) insufficient description of the items to be seized or the location.

Dealing With the Search Warrant

Execution of a search warrant is an unexpected event. However, by establishing a response team and procedures a business can minimize problems arising out of the execution of a search warrant. The most important step is to insure that counsel is notified immediately. In this day of voicemail, it is vitally important that employees be instructed how to contact in-house counsel, backup in-house counsel, outside counsel and backup outside counsel. Numerous contingency plans should be in place so that a knowledgeable attorney can quickly be notified that a search warrant is being executed.

Title 18 USC § 2231 provides that anyone who forcibly assaults, resists, opposes, prevents, impedes, intimidates or interferes with a person executing a search warrant is guilty of a felony. It is vitally important that no one impede the execution of a search warrant. However, it is also imperative that steps be taken to insure that the client's interests are protected and agents do not violate attorney/client privilege or other applicable privileges. Clearly, these competing concerns make it very important that experienced counsel be contacted immediately.

Procedures should be in place instructing employees to immediately fax a copy of the search warrant to counsel. Employees should be instructed to politely request that the agent wait until counsel arrives. Employees should not take any steps to impede the agents executing the warrant. A polite suggestion that the agent should seal the described area and await counsel is not unreasonable. However, this is a circumstance that must be played out in a common sense fashion. Headstrong law enforcement will not look favorably upon interference with the execution of a search warrant.

If counsel is not present, management should obtain a copy of the warrant and request a copy of the affidavit. Requesting the affidavit is usually an empty gesture because affidavits are usually sealed to protect confidential investigative information. However, if the affidavit is available, it will provide a wealth of background information and should be sought.

The warrant should be carefully reviewed to determine what is described and where the search is to take place. Obviously, if the search warrant describes a stolen automobile, there is no reason for an agent to rifle through someone's desk. The language of the warrant will include a description of "instrumentalities of criminal activity" and agents will attempt to find any indicia of criminal activity even though it is conceivably not properly identified in the warrant.

Execution of a search warrant is an excellent time for law enforcement to attempt to interview employees. Employees should be aware of their rights and obligations in this setting. Employees have a right to choose to talk to or not talk to investigative agents. However, employees should be informed that counsel would like to be present and that if any employee does speak with an agent he/she must provide truthful information. The issue of separate counsel for employees may need to be addressed. A review of the corporate bylaws and applicable state law may be necessary with respect to the issue of reimbursement of attorney fees for separate counsel. Use of independent counsel to represent the interests of an employee, although expensive, is usually money well spent. This independent attorney can aggressively represent the interests of the employee while also coordinating defense efforts with corporate counsel where appropriate.

As stated above, searches can be done pursuant to the consent of a person with authority. It is very important that employees be pre-instructed that they do not have authority to consent to

any searches. In this way, the parameters of the search warrant will not be extended by an unwitting employee.

Experienced white collar criminal counsel will carefully monitor the execution of a search warrant. This can be done very effectively by observing the agents and dictating notes without interfering with the execution of the warrant. Counsel should attempt to open a dialogue with the agent in charge or the AUSA involved in the search warrant. If privileged documents are seized, counsel should take all steps to insure that those documents are sealed and not reviewed until an independent judicial officer has determined that they are not privileged. This kind of dialogue should be conducted with the AUSA and the telephonic involvement of the issuing magistrate may be necessary.

A search warrant affidavit can contain a wealth of investigative information. Generally, affidavits are sealed to protect the confidential nature of the information. Counsel for a business should carefully consider whether to attempt to unseal an affidavit. The affidavit will provide information to counsel, but it also may provide an incredibly juicy story about your client for the local newspaper.

If counsel is unavailable to monitor the search warrant, employees should be instructed to take notes concerning the activity of the agents, the objects seized, the time that is taken to execute the search warrant, where items were seized from and any other information which presents itself. Agents may disclose information concerning objects retrieved or they may make comments about what they are doing. These kinds of quotes should be noted.

An inventory of the search warrant should be obtained from the agent in charge.[18] If there are concerns about the need for access to significant medical or other records, this should be addressed with the agent in charge, the AUSA or even the magistrate. See FRCrP, Rule 41(d).

Rule 41(e) sets forth the requirements for a motion for the return of property. Rule 41 also addresses motions to suppress.

Conclusion

This article is intended to only touch upon areas of concern for healthcare providers who are served with a subpoena or search warrant. By drawing attention to these areas hopefully the healthcare practitioners will be able to minimize damage before contacting an experienced white collar practitioner.

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[1] The U.S. Attorney's Manual Section 9-11.154 provides that if the target and his counsel sign correspondence indicating that they intend to assert the Fifth Amendment, in most cases no Grand Jury appearance will be necessary.

[2] The federal guidelines for search and seizure of computer records can be located at: www.usdoj.gov/criminal/cyber-crim/search-docs.

[3] Although the U.S. Attorney's Manual provides varying definitions for the term "target" or "subject," these definitions or descriptions are insignificant. If your client is identified as a target or a subject, it is obviously a very serious matter. If the client is not identified as a target or subject that is no assurance that he or she cannot later become one.

[4] *See, generally*, 18 USC §§ 1503-1517.

[5] *U.S. v. Manko*, 89 CR 91; 1997 WL 107440, S.D.N.Y. 311 (1997).

[6] Other possible privileges exist. There is some case law to support a psychiatric/patient privilege, substance abuse privilege. *See, generally*, *Jaffee v. Redmond*, 518 US 1 (1996).

[7] *See* FRCrP, Rule 41.

[8] An excellent in depth analysis of corporate internal investigations is found in *Corporate Internal Investigations* by Webb Tarun & Molo.

[9] Fisher v. U.S., 425 U.S. 391 (1976).

[10] *See, generally*, 5 USCA App. 3 § 6(a)(4).

[11] *See, generally*, 42 CFR 1006.4(c) and 1006.4(f)(3)(ii).

[12] *See* 28 USC 1345.

[13] *See* 31 USC § 3733(j) and 18 USC § 3486(c).

[14] *See, generally*, 31 USC § 3733(f), (g) and (h).

[15] *Steagald v. U.S.*, 451 U.S. 24, 214.

[16] Administrative searches are not addressed in this article. Highly regulated businesses are subject to relaxed standards under the Fourth Amendment. These industries involve public safety, etc.

[17] *U.S. v. Leone*, 468 U.S. 897(1984).

[18] *See*, FRCrP, Rule 41.