

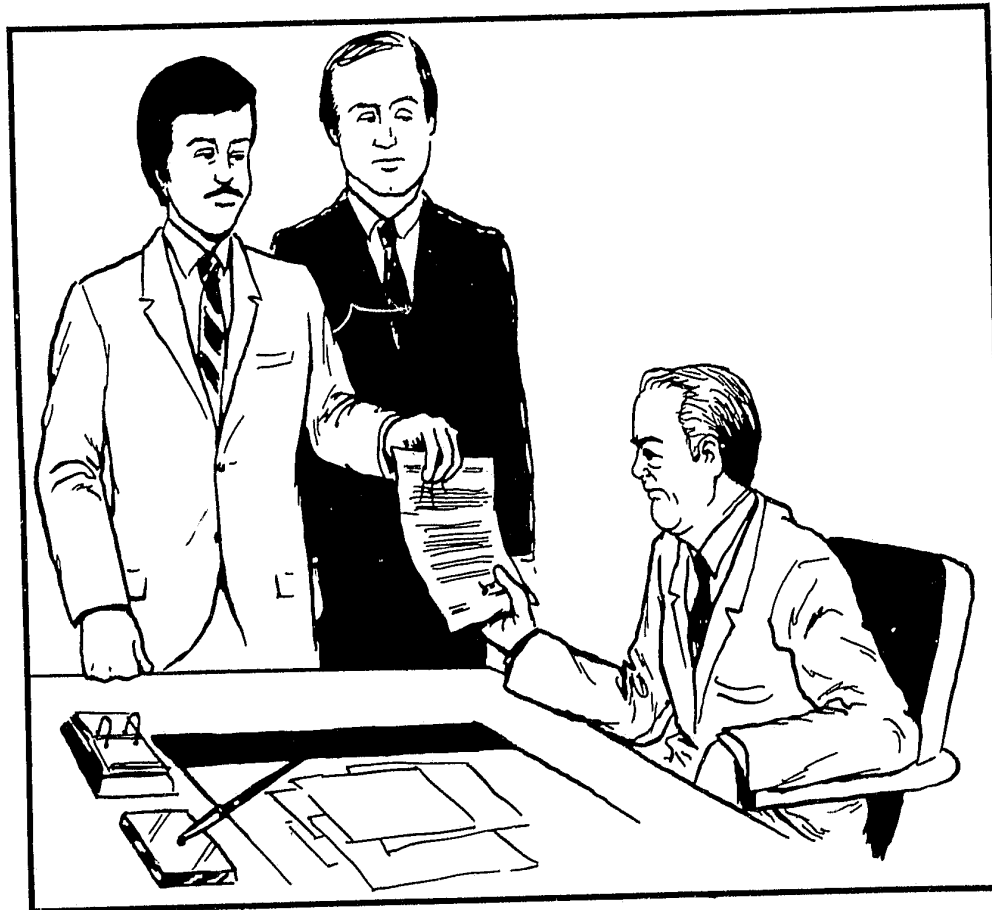
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WHITE COLLAR CRIME

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# THE USE OF THE SEARCH WARRANT IN THE INVESTIGATION OF WHITE COLLAR CRIME



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OPERATIONAL GUIDE TO WHITE-COLLAR CRIME ENFORCEMENT  
THE NATIONAL CENTER ON WHITE-COLLAR CRIME

Herbert Edelhertz, Project Director

Thomas D. Overcast, Deputy Director

THE USE OF THE SEARCH WARRANT IN THE  
INVESTIGATION OF WHITE-COLLAR CRIME

By

Michael M. Mustokoff  
Attorney-at-Law  
Philadelphia, Pennsylvania  
formerly  
Chief, Economic Crimes Unit  
Philadelphia City District Attorney's Office

NCJRS

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Project Monitors:

James O. Golden, Director  
Criminal Conspiracies Division  
Office of Criminal Justice Programs

ACQUISITIONS

Jay Marshall  
Criminal Conspiracies Division  
Office of Criminal Justice Programs

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#### ABOUT THE AUTHOR

Mr. Mustokoff is currently engaged in the practice of law in Philadelphia with the law firm of Duane Morris and Hecksher. Until 1979 he was employed in the Philadelphia District Attorney's Office where he served as Chief of the Economic Crime Unit for four years. During his tenure in that office, Mr. Mustokoff was responsible for a variety of prosecutorial functions including supervisory responsibility for all major fraud investigations and prosecutions, for grand jury investigation of Medicaid fraud and boarding and nursing homes, and a major investigation of the School District of Philadelphia, Food Services Division. He is on the faculty of the Philadelphia College of Textiles and Science where he teaches courses on white-collar crime, substantive law and investigative techniques. Mr. Mustokoff received his Juris Doctor degree from the University of Pennsylvania Law School.

## FOREWORD AND ACKNOWLEDGMENTS

This Operational Guide is one of a series developed by the National Center on White-Collar Crime as part of the Center's program of support services to agencies engaged in the prevention, detection, investigation, and prosecution of white-collar crime and related abuses. These Operational Guides are intended for use in actual law enforcement operations, as well as training, on the theory that the best training materials are those which most respond to the day-to-day needs of users who regularly practice their skills. This series evolved parallel with, and as a part of, the Center's preparation of a curriculum for training in the field of white-collar crime enforcement. Its authors are encouraged to express their own views and, as might be expected, different and even conflicting perceptions and approaches will be found among the National Center's Operational Guides and other publications.

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Herbert Edelhertz  
Project Director  
National Center on White-Collar Crime

## THE USE OF THE SEARCH WARRANT IN THE INVESTIGATION OF WHITE-COLLAR CRIME

by

Michael M. Mustokoff

### I. INTRODUCTION

Even in the increasingly complex world of criminal investigation, white-collar crime has been given special status. White-collar crimes are often complex. They are often covert and prolonged in duration. They are rarely explained and almost never proven with the testimony of a single witness. The environment in which they are most likely to occur--anti-trust, securities, or even home repair--is frequently foreign to the experience of most investigators and prosecutors.

The unfortunate result is that white-collar crime investigation is often regarded with great reluctance by those within the law enforcement community. There is a tendency to avoid the handling of such cases. Overlooked in this flight from responsibility is the ease with which tools routinely used in other forms of investigation might be employed effectively in the pursuit of white-collar crime. The successful probe of white-collar crime does not necessarily require the same degree of sophistication as its perpetration. One need not be a CPA to bring an embezzler to justice.

The criminal search warrant is perhaps the best example of a commonly used implement of investigation, which is often neglected in white-collar crime enforcement efforts. This operational guide has been prepared to make clear how this instrument can be used as an effective and readily available enforcement tool.

## II. WHY USE A SEARCH WARRANT?

### A. The Element of Surprise

The considerations supporting the use of a search warrant in white-collar crime investigation are best explained in terms of immediate access and the creation of investigative leads.

White-collar crimes are often paper crimes, leaving very visible, but easily destroyed trails. The books and records of an individual suspect or firm will often explain the motivation of a crime, the method of its perpetration, or even the evidence of the crime itself.

Once the target of an investigation has reason to know of his or her jeopardy, no record in the subject's possession can be considered safe. The temptation to deface, alter, or destroy evidence of wrongdoing is simply too great. If the records are destroyed the prosecution is left to prove its allegations through the testimony of inarticulate victims, or plea-tainted co-conspirators. Thus, the prime consideration arguing for a search warrant is the element of surprise. Where the availability of probable cause information permits the use of a search warrant, the warrant is much more effective than a subpoena.

The choice of compliance or selective compliance with a grand jury subpoena is not left to the subject of a search warrant. If execution of the search warrant is not successful the subpoena always remains a viable alternative. Furthermore, as will be explained, the records permissibly taken pursuant to a search warrant may often provide a wider spectrum of investigative leads than the specific items named in a grand jury subpoena.

The immediate seizure of records by search warrant at one location is likely to protect the integrity of documents held by the target at another. The likelihood of creating conflicting entries, or other inconsistencies between seized records

and those retained by a criminal suspect, is often the only way to ensure that retained records will not be altered.

The effect of immediate access and possession of potential evidence is not limited to the preservation of documents in their original form. The seizure of records decreases the opportunities for alibi creation or other obstruction by co-conspirators. This is especially important in the unraveling of white-collar crimes in which the participants are likely to have little independent recollection of the details of specific transactions.

### B. The Opportunity to Be on the Crime Scene or to Observe the Crime as It Happens

Knowledge and preservation of the crime scene, so crucial to the investigation of violent offenses, are often overlooked in the probe of white-collar crimes. It is wrongly supposed that the traditional business environment offers no clue as to the perpetration of the crime. In fact, execution of a search warrant usually offers the best view of the business operation under suspicion. Further investigation, trial preparation, and courtroom presentation routinely require intimate knowledge of the physical location and interrelation of individuals, their files, and record-making functions. Familiarity with the physical layout of the crime scene may provide the "why" to the now-famous Watergate inquiry--who knew what and when did they know?

1. The Significance of "Plain View." Where investigators have justifiably entered a building, as in the execution of a valid search warrant, some items may be seized which have not been specifically identified in the warrant. There must, of course, be probable cause to believe at the time of the "plain view" that the observed items constitute contraband, stolen property, or evidence of a crime. The usual test for such

plain-view seizures is whether the investigating officer can identify the item as contraband based upon visible inspection.

So long as the sighting of the items occurs during the execution of the type of search that reasonably could be expected to arise from the body of the warrant, the seizure is legal. Thus in a search for business records, contraband found in a filing cabinet may be taken. A more specific example is the seizure of rubber certification stamps in the execution of a warrant for falsely certified checks. The location or even the current existence of the rubber stamps is not known prior to the search. When discovered, however, there is no question as to the value of the stamps as evidence of the crime or the legitimacy of their seizure.

The execution of a search warrant provides the opportunity for a quest for the ultimate treasure in white-collar crime investigation--the second set of books. Frequently, the financial records of a target business have been the subject of successive investigations; however, upon receipt of the grand jury subpoenas, the suspects merely smile. The books submitted to the investigators are always in perfect order. The business establishment is rarely searched for the more valuable second set showing who paid what for which service.

Another valuable opportunity provided by the "plain view" of search warrant execution is the occasion to see the suspect's "trash." Items abandoned by an individual are no longer deemed to be in the person's possession and he or she no longer has a reasonable expectation of privacy regarding them. Waste-paper baskets, trash bins, and garbage may contain work products untouched by the shredder.

#### C. The Opportunity for Face-to-Face Contacts

Recent holdings of both state and federal courts have emphasized that Miranda warnings are required only where the investigation has both focused on an individual and that

individual is in the custody of law enforcement personnel. Quite often neither of these conditions will be met at the time of search warrant execution. This is especially true in white-collar crime investigation where the probable cause to believe that fraud has occurred is certain long before the identity of the perpetrator is known, or evidence of criminal intent is clear.

In Beckwith v. U.S., 425 U.S. 341, 96 S.Ct. 1612 (1976), two Internal Revenue Service agents questioned the defendant at his house for three hours. No Miranda warnings were given. The Court held that although the investigation had indeed focused on Beckwith he was not in the custodial environment envisioned by Miranda. The Court found that such an environment is created only by the indicia of custody which lead a suspect to believe that the police will not release him until a confession has been elicited. Thus the opportunity for exploratory conversations with subjects of investigation has not only been contemplated, but sanctioned by the court. See Oregon v. Mathiason, 429 U.S. 711, 97 S.Ct. 711 (1977).

Recently the United States Supreme Court has extended the limitations of Miranda even under circumstances where warnings have been given and the right to counsel requested. In Rhode Island v. Thomas J. Innis, 48 Law Week 4506 (5/13/80), the Court held that where actual interrogation had ended with the suspect's assertion of his right to counsel, information elicited by police as a result of conversation among the officers was not the functional equivalent of "express questioning" and was, therefore, admissible.

The facts of the case bear some analysis. The defendant had been arrested for a shotgun slaying. He had asserted his Miranda rights and was being transported by police car when one police officer commented to his partner, "God forbid one of those kids [handicapped school children] should find the shotgun." The prisoner interrupted the conversation and told the police he would direct them to the murder weapon, which he did.

The Court held that the shotgun was admissible. It found that the defendant had not been interrogated, principally because the police officer's remarks had been directed to his partner and not the prisoner. The Innis case is distinguished from Brewer v. Williams, 430 U.S. 387, 97 S.Ct. 1232 (1977). There the Court found that remarks elicited from a murder suspect in transport came directly as a result of statements made by police to encourage that response. In Brewer a policeman who knew that the defendant was deeply religious stated that they should find the body of the victim so that the deceased could have the Christian burial to which she was entitled.

The very complex relationship between these court decisions, practical considerations of warrant execution, and successful techniques might be best explained through a mathematical theorem. In fact, if Sir Isaac Newton or some other great mathematician had concentrated his efforts on this area of criminal investigation, he might have written that "the number of investigative leads increases directly with the number of contacts with the crime scene."

As the investigation intensifies, the relationships of people to the crime, both participants and non-participants, are clarified. It becomes easier to ask the right person the right question. Yet Newton also might have found that "the likelihood of finding additional leads decreases directly with each successive contact with the scene."

Thus it is a mistake to enter the crime scene prematurely. The more the investigation begins to focus on particular persons, the more likely it is that those individuals will follow the conventional wisdom of remaining silent.

During the course of a warrant's execution, conversations have a way of taking place with persons who eventually become suspects. Frequently statements offered as exculpatory prove to be devastating at trial. In searching a drug firm that had fraudulently marketed a weight reducer, one corpulent sales

manager made clear to the investigator, "I don't know why you're interested in those pills--they don't do nothing."

It should also be noted that many honest and/or disgruntled employees are holding back merely waiting for the perfect outlet for their knowledge and/or spite. Execution of the warrant may provide that outlet.

Conversely, reliance on a grand jury subpoena may waste such an opportunity. It is far better to search the secretary's desk, creating the opportunity for an extended conversation, than to place the grand jury subpoena on the same desk and hope for the desired effect.

#### D. Legal Considerations in the Use of a Search Warrant

The use of a search warrant in white-collar crime investigation is not merely a matter of good street sense; there are sound legal reasons that dictate its use.

1. Avoidance of Delay. In many jurisdictions the period of time during which a grand jury may make inquiry is limited by law. Where the target of a grand jury probe is able to create an appellate issue prior to indictment, the suspect may very well succeed in gaining an indefinite reprieve through the grace of the backlog faced by the higher court. The prosecutor must be prepared to face routinely filed motions to quash investigative subpoenas. The government's attorney must fear the novel issue which might strike the fancy of the grand jury's presiding judge, or an appellate bench.

Where a search warrant is employed, however, the grand jury may have immediate access to the evidence seized. The courts have ruled that the grand jury may consider even illegally seized evidence, thereby eliminating the opportunity to contest the seizure prior to indictment.



2. Protection of Third Party Interests. Recent case law on the state level as well as passage of the Federal Financial Privacy Act have combined to create for the clients of financial institutions a reasonable expectation of privacy in their records, thus overruling the United States Supreme Court's decision in U.S. v. Miller, 425 U.S. 435 (1976).

The practical result of these developments is to put investigators searching for records via subpoena duces tecum to the twin burdens of establishing a reasonable belief that a crime has been committed and that the evidence sought will aid in the investigation of that crime. Under these circumstances there is less distinction in the obstacles to obtaining either search warrants or subpoenas.

Furthermore, the search warrant can be drafted in such a way that it forbids disclosure of the search by the financial institution holding the records. A judicial order of this type is ordinarily justified in situations where disclosure might jeopardize further investigations or individuals.

A final consideration in these matters is the protection of legitimate third-party interests from civil suit. Banks, insurance companies, and other financial institutions often require, even where not legally mandated, a search warrant which they hope will immunize them from nuisance law suits. The cost of producing a valid search warrant for this purpose is a worthy investment in good community relations.

3. The Production of Some Financial Records May Not Be Compelled by Subpoena. The law has always been clear that the U.S. Constitution's Fifth Amendment privilege against self-incrimination applies only to individuals. Thus the courts have held on many occasions that the incriminatory books and records of a corporation, i.e., an artificial person, could be compelled. Johnson v. U.S., 228 U.S. 457, 458 (1913).

Conversely, an individual's work product, personal or business papers--an extension of the legal, if not biological

person--cannot be compelled by legal process. In the now-seminal case of Andressen v. Maryland, 427 U.S. 463 (1976), the United States Supreme Court drew a sharp distinction between items seized as a result of a legal search warrant and the compulsion of an individual to actually produce evidence against himself.

In Andressen, the defendant, a lawyer, was suspected of having defrauded a client who had purchased certain realty. A search of the defendant's offices resulted in the seizure of documents leading to conviction. The court reasoned that the search and seizure did not force the defendant to act as a witness against himself because he had not been required to produce the seized documents, nor would he be compelled to authenticate them. As Justice Holmes wrote in the Johnson case, supra, "A party is privileged from producing the evidence but not from its production."

Furthermore, it is becoming increasingly clear that the Fifth Amendment's protection of privacy is limited. "The Court has never suggested that every invasion of privacy violated the privilege." The Fifth Amendment protects against "compelled self-incrimination, not [the disclosure] of private information." Fisher v. U.S., 430 U.S. 914, 97 S.Ct. 1325 (1976).

#### E. Routine Seizures of Evidence Prior to Arrest

Search warrants may also be used routinely as a means of seizing evidence which might otherwise prove difficult to obtain. The prime example, previously alluded to, is that of third-party business records, i.e., the records of banks, insurance companies, and other financial institutions.

It is also suggested that search warrants may be used effectively in the seizure of handwriting exemplars and other non-testimonial evidence under circumstances where grand jury subpoenas could not be used.

In the landmark case of Gilbert v. California, 388 U.S. 263 (1967), the United States Supreme Court stated clearly that the taking of exemplars of the defendant's handwriting for purposes of identification did not violate the privilege against self-incrimination. Other cases have pointed out in Fourth Amendment language that individuals have no reasonable expectation of privacy in something as available for public knowledge as handwriting. See U.S. v. Mara, 410 U.S. 19, 83 S.Ct. 774 (1973). Enforcement of a search warrant ordering exemplars assumes the form of any similar proceeding to enforce a court order.

### III. WHEN TO OBTAIN A SEARCH WARRANT: GENERAL OBSERVATIONS<sup>1</sup>

#### A. The Establishment of Probable Cause

1. Introduction. Consideration of all search and seizure problems begins with analyses of the Fourth Amendment of the United States Constitution.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrant shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Thus, the reasonableness of government's intrusion on private property must be grounded in the probable cause to believe that a crime or the fruits of a crime can be found on the premises to be searched. It is based on numerous identifiable elements each of which must contribute to the need for the warrant. Probable cause exists where there is knowledge of sufficient facts and circumstances, gained through trustworthy information, to warrant a person of reasonable caution to believe that a crime has been or is being committed and evidence can be

found at the described location. Brinegar v. U.S., 338 U.S. 160, 175 (1949).

Only a "probability" as opposed to a prima facie showing of criminal activity must be shown. Beck v. Ohio, 379 U.S. 89 (1964). The test for probability is not what might be probable cause to an untrained lay person, but what is probable cause in light of the special skill and training of the person seeking the warrant.<sup>2</sup> The court's willingness to recognize special expertise in the establishment of probable cause is of particular importance to white-collar crime investigation. Knowledge of business custom and industry practice may reveal indicia of crime to only the most sophisticated observers.

2. How the Information Came to Be Known to the Investigator--the Informant. Most often the information for a search warrant is supplied by an informant. This information must be distilled to reveal:

a. How the information became known to the informant and when the affiant (person obtaining the search warrant) received the information from his informant. The independent judicial authority whose duty it is to issue the warrant must not only know how the information became known to the informant, but also the length of time that has elapsed from the date the information was received until warrant execution.

Depending upon the circumstances of the individual case, any inordinate delay may render the information stale, i.e., there may no longer be any reason to believe that items to be seized are still on the premises. It is noteworthy that in Pennsylvania a search warrant must be executed within two days of approval by the issuing authority.

It is also important to note that in the instance where the items to be seized are the business records of an ongoing firm, those books might always be expected to remain on the firm's premises.<sup>3</sup> The same is true where records are statutorily required to be kept. Under these circumstances, the date when

the affiant received the information becomes less crucial to either the timeliness of the warrant or its execution.

The warrant must state clearly how information became known to the informant. The trier of fact, the defendant, and the defendant's attorney must be given the opportunity to scrutinize the observation process for distortion or falsehood.

b. When the informant observed the facts recorded in the warrant. The same considerations mentioned above are again relevant.

c. Personal observations of the informant. The companion United States Supreme Court cases of Spinelli v. U.S., 393 U.S. 410 (1969) and Aquilar v. Texas, 378 U.S. 128 (1964) are clear in their requirement that there must be independent corroboration of the information supplied by the informant. Those cases look to the need for personal observation by the officer obtaining the warrant. Once again, in the case of white-collar crime investigation, this may not be necessary. Statutory requirements or business custom and usage may likewise provide sufficient independent verification of an informant's statement. In any event, the corroborating observations must be set forth in detail.

It should be noted that where information comes from the affiant's personal knowledge or observation, as in the case of undercover investigation, no further inquiry is needed.

d. Reliability of informant. Informant reliability must be considered in the assessment of just how much independent corroboration is necessary to provide probable cause for the issuance of a warrant. Credibility can be demonstrated through the informant's past performance or inherent reliability.

Of special importance to white-collar crime investigation is the willingness of the courts to infer the credibility of particular classes of informants. Law enforcement personnel and others who have access to public records are considered reliable. See Whitely v. Warden, 401 U.S. 560 (1971).

If information is employed in the regular course of business, the fact that it is so employed is an indicator of its reliability. It is necessary, however, to explain the extent of the reliance and the reasons for it. Examples of this type of information might include time schedules, commercial papers, and scientific information.

The courts have also recognized the inherent reliability of the citizen informant who is named and identified in the body of the search warrant. This is especially important in white-collar crime investigations where informant safety, as well as the probability that the same informant will be used as a source in the future, are less likely to be considerations.

3. Description of the Location to Be Searched. A description of the premises to be searched may be by house number or any other method sufficiently specific to identify the premises. Care should be taken, however, to describe the premises to be searched beyond a mere street number. An incorrect number is not fatal to the warrant's legality where the description of the premises is sufficiently detailed to be identified without its use.

If the location is an office within a building or warehouse, then the warrant should be designated as such and limited to the premises to be searched. In each of these instances, specific location by floor and room number must be stated. The use of the premises should also be described. As always, rules of reasonableness prevail. A warrant for business records cannot be used as carte blanche access to an industrial site.

Where the object of the search is believed to be in a vehicle, the car is best described in terms of manufacturer, year, color, body style, serial number, and license plate.

4. Description of the Property to Be Seized. A search warrant may be issued for the fruits of a crime, contraband or

items illegal per se, tools used in the perpetration of a crime, or even "mere evidence." Although items not mentioned in the warrant cannot usually be taken, a seizure is legal so long as the items can be identified within a general classification appearing on the face of the warrant.<sup>4</sup>

The description of the property to be seized should be as specific as possible in regard to the nature of the item and its appearance.<sup>5</sup> If manufacturers' and/or serial numbers are known, each should be mentioned. However, care should be taken to avoid including any uncertain information. If a serial number is not known in its entirety, that lack of information should be reflected in the warrant.

The relationship between the item to be seized and the crime should be stated in the warrant. For example: a search warrant used in a land fraud investigation might explain that certain documents are to be seized because it is expected that they will reveal true property ownership. Care should also be given to describe books and records with as much detail as possible. The type of record is likely to reflect the nature of the crime. For example, in a nursing home investigation, specific patient files as well as corresponding billings should be identified.

The requirement of reasonableness is especially important in white-collar crime investigations where the items sought are likely to be records or documents pertaining to a specific period in time, an isolated function, or an individual. In drafting the warrant care should be taken to reflect these limitations. Conversely, where the criminal activity under investigation is extended or evidences a pattern, those facts must be clearly stated in the warrant.

Where it is anticipated that an accountant will be used in the examination of the items seized, the same expert should be employed in the description of those items for the warrant. Specific books of original entry and sales and cash disbursement journals should be identified.

The question often arises as to how much an investigator may extrapolate from the affidavit to seize materials possibly related to the pattern of a crime. The general rule is, of course, that items not mentioned in the warrant may not be seized. The courts, however, have generally ruled that a search may extend to items reasonably related to the purposes of the search. U.S. v. Joseph, 174 F.Supp. 539 (E.D. Pa. 1959) aff'd 278 F.2d 504 (3d Cir. 1960) cert denied, 364 U.S. 823 (1960). In the Andressen case, supra, the United States Supreme Court held that although the investigation was aimed at fraudulent transactions involving a specific building lot, documents pertaining to other lots could be reasonably seized on the theory that those papers might show criminal intent as to the particular lot under investigation.

At the same time, items that the investigator should reasonably anticipate in the formulation of his search warrant must be distinctly identified. In the Pennsylvania case of Commonwealth v. Searles, 450 Pa. 384, 302 A.2d 335 (1973), the court held that a warrant seeking "check and checkwriting equipment" could not be used to justify the seizure of the defendant's notebook for the purpose of obtaining handwriting exemplars. The court specifically noted that handwriting samples could be obtained at any time, although the contents of the notebook were private and thus protected by the Fourth Amendment. The problems raised by these cases can, of course, be eliminated by merely securing the premises and obtaining a second warrant.

Another area of concern in the execution of search warrants in white-collar crime investigation is the effect that the seizure might have on the legitimate business activity of the investigative target. The dollars-and-cents loss and/or inconvenience resulting from a search may, however, be regarded as a cost of doing business.

There are situations where special precautions must be taken. The medical records of a Medicaid clinic or nursing

home demand special consideration in cases where their unavailability in an emergency could be life threatening. The mere possibility of such an occurrence may be sufficient for a court to issue an extraordinary order, returning evidence. It is suggested that under these circumstances the probable cause section of the warrant should actually make provision for the furnishing of facsimile copies of necessary records to the health care facility at a specified hour soon after the search has been conducted.

B. Sample Warrants (see Appendix A)

1. Example No. 1--Fraudulent Business Establishment. Note the following:

- a. relevant time period
- b. location--office number
- c. probable cause
  - 1) continuing nature of investigation
  - 2) confirmation of complaints by shipping records and bank records
  - 3) citizen informants are identified by name and address
  - 4) status of defendant's business is noted

2. Example No. 2--Seizure of a Specific Item.

3. Counterfeit Labels. Note the following:

- a. the relationship between items to be seized and the probable cause section of warrant
- b. the description of premises
- c. the limitations on items to be seized

C. Investigative Considerations in the Use of Search Warrants

1. Effect Upon the Target, Co-conspirators, and Friendly Witnesses. As in any other step in the investigation of a

criminal case, consideration must be given to the effect that the search warrant's execution might have on the target, possible co-conspirators, and friendly witnesses.

The search warrant provides a blueprint for the target as to how much evidence the government has accumulated in its case. Any flaws or misconceptions in the government's theory of the case may also be revealed. The importance of the release of this information to a target cannot be underestimated and must be weighed in charting which steps to take. The search warrant also avails co-conspirators of the details of the case. The investigator must consider the effect of focusing the investigation, through the execution of the search warrant, on a person other than the principal target. Thought must be given to the possible destruction of evidence. The need to execute simultaneous search warrants or subpoenas should also be considered. Conversely, the naming of another person as principal target may encourage the least culpable participants in a criminal venture to come forward.

The public seizure of records may stir the waters. Persons anticipating possible involvement may see it in their best interest to make information available to the government. The same effect may be achieved among persons otherwise reluctant to come forward because of apparent government disinterest.

2. Problems Resulting from Quantity of Information. The amount of information to be requested in, and obtained by, search warrants must be given careful thought. The seizure of too much information may tax analytical processes and resources beyond use. Materials which have little relevance to the investigation or which may pose problems of storage or security should not be requested. Consideration must be given to the precise need for evidence to be seized in terms of the investigator's ability to assimilate and then employ that information. If not enough evidence is sought, the investigation may be stymied from the start. Yet, large quantities of

non-digested evidence can hinder an investigation as much as insufficient information.

The chronological and spatial relationships between the evidence to be seized and the crime must be pieced together as much as possible before the warrant is executed. Unless investigators have a clear picture of what is to be seized and why, important evidence is likely to be overlooked in favor of physical bulk. The courts will allow few second opportunities to search the same premises. Under most circumstances, repeated searches of the same location will be found unreasonable unless investigators "have presented sufficient additional information that the contraband remains in or has recently been moved to the premises despite the previous search." Commonwealth v. Bruno, 466 Pa. 245, 352 A.2d 40 (1976).

#### D. Legal Considerations

1. Attachments to the Search Warrant. By law, search warrants are issued by neutral and detached magistrates upon oath or affirmation. The general rule of law is that in the consideration of probable cause a court may only take notice of information included within the four corners of the warrant. Thus when the crime under investigation involves false claims or misrepresentation, it is necessary to provide proof of falsity. The best proof of falsity is an expert's affidavit. Such an affidavit should include a statement of the expert's credentials and qualifications, and should be attached to the body of the warrant. Where the misrepresentation itself appears in writing, it should also be attached to the warrant. The probable cause section of the warrant should point clearly to the misrepresentation and then refute the falsehood in detail.

The preceding paragraphs notwithstanding, federal law does permit the affiant to supplement the warrant with sworn oral testimony before the magistrate. The use of this procedure,

however, should be regarded as a safety valve to be employed only in emergency situations. It is better to secure a second warrant than to be forced to litigate the precise wording of the representations made to the magistrate. If oral statements are made, they should be immediately committed to writing and approved by the magistrate.

2. The Use and Limitations of Administrative Search Warrants. A byproduct of the growth of the government's regulatory powers has been the emergence of administrative agencies responsible for the inspection of commercial establishments. Recently the United States Supreme Court has extended constitutional prohibitions against unreasonable search and seizure to agencies examining those business establishments, or portions thereof, which are closed to the public.

In Marshall v. Barlow, 436 U.S. 499, 98 S.Ct. 1942 (1978), the Court held unconstitutional a warrantless administrative search made pursuant to the Occupational Safety and Health Act. The Court required that administrative searches be made under a warrant reflecting reasonable legislative or administrative standards for the conducting of an inspection. That ruling has been interpreted to mean that agency inspections must be accompanied by some written permit in accordance with and reflecting its enabling authority.

Where a business or a portion of a business is open to the public, it may be entered by law enforcement personnel. In order for the entry to trigger constitutional safeguards, there must still be a reasonable expectation of privacy. See Katz v. U.S., 389 U.S. 349, 87 S.Ct. 507 (1967).

Note should be made that many business establishments are divided between public and non-public areas. Often a service counter will serve as a boundary. Under most circumstances police personnel are prohibited from venturing behind the counter without a warrant.



Law enforcement personnel should likewise be discouraged from the deliberate use of an administrative search warrant as a ruse to gain access for purposes of criminal investigation. Thus in Michigan v. Tyler, 436 U.S. 499, 98 S.Ct. 1816 (1978), the Court noted distinctions in the right of entry accorded firemen in the course of their duties. Obviously no warrant is required when the building is entered to fight a fire. When, however, extended inspection is needed to determine the cause of the fire, an administrative warrant is required for access. If during the course of such inspection evidence of arson is discovered and further investigation is required, then a criminal search warrant setting forth the traditional demonstration of probable cause must be obtained.

It is noteworthy that the same principle of good faith pursuit of information consistent with agency authority limits the civil summons power of regulators having criminal jurisdiction. Although once again the federal courts have used a common-sense approach to give agencies wide latitude in their investigations.

In the case of LaSalle National Bank v. U.S., 437 U.S. 298, 98 S.Ct. 2357 (1978), the Court held that in order for an Internal Revenue summons to be enforceable it must be issued prior to any recommendations for criminal prosecution and in a "good faith pursuit of the taxpayer's civil liability."

In defining good faith the Court saw fit to ignore the individual agent's motivations which were, in fact, to pursue a solely criminal case. The Justices chose to rely on the authority of the IRS to investigate matters having the potential for both civil liability and criminal jeopardy. In so doing the Court set an almost impossible standard. The taxpayer is faced with the monumental burden of disproving "the actual existence of a valid civil tax determination or collection purpose by the Service." (See also U.S. v. Genser, 595 F.2d 146, 3rd Cir., 1979; U.S. v. Richter, 603 F.2d 744, 8th Cir., 1979; and Jensen v. Farrell Lines, Inc., 477 F.Supp. 335,

1979.) Thus the taxpayer must show the singularity of criminal investigative purpose on the part of the agency and not merely its agent.

Of special importance to investigators was the reliance placed by the Court on its earlier decision in the case of U.S. v. Powell, 379 U.S. 48, 57-58 (1964). Powell was cited for its recitation of elements of good faith: (1) investigation must be conducted pursuant to a legitimate purpose; (2) information sought must be relevant to that purpose; (3) information sought must not already be within the agency's possession; and (4) required administrative steps must be followed. The Powell Court did say, however, that bad faith would be found where information was sought to harass an individual or to settle a collateral issue.

#### IV. THE EXECUTION OF SEARCH WARRANTS IN THE INVESTIGATION OF WHITE-COLLAR CRIMES

The execution of search warrants in white-collar crime investigations calls for something other than a knock on the door, followed by a sledge-hammer attack and an announcement of official identification. The white-collar criminal is much more likely to be submissive to legal authority. Cooperation may be needed in opening a safe or culling pertinent documents. Investigation of computer abuse may be impossible without the white-collar criminal's aid. Many times persons in possession of pertinent documentary evidence have no knowledge of or relation to the matter under official scrutiny.

Of course, the procedure for actual execution does not vary: police officers must knock, announce their identity and purpose, while waiting a reasonable time before forcibly entering the premises. (Appendix B shows a checklist useful in the preparation of a search warrant.)

### A. Who Should Execute the Warrant?

1. The Prosecutor's Role in Warrant Execution. For a variety of reasons, execution of search warrants is best left to investigative personnel. Experienced agents understand their duties and responsibilities. Police or professional investigators are often better able to deal with reluctant or aggressive suspects.

Recent developments in case law also argue against the presence of prosecutors on the crime scene. There is a growing tendency to sue prosecutors for misconduct allegedly committed in the course of an investigation or while litigation is pending. Recent case law has not clarified the subject. It is not certain, for instance, that the immunity extended to prosecutors with respect to the discharge of their prosecutorial duties in the Supreme Court case of Imbler v. Pachtmen, 424 U.S. 409 (1975) covers all situations. Prosecutors and investigators must be aware of recent cases that have held that officials sued for damages under the U.S. Civil Rights Act for actions taken as part of their official duties are immunized from law suit only when their actions are taken in good faith and with a reasonable basis. Actionable questions of good faith may arise whenever a search warrant is invalidated for insufficient probable cause. It should be noted that even in the Imbler case, the Court specifically stated that prosecutors were immune from civil suits under Section 1983 of the Civil Rights Act only in the initiation and presentation of the state's case. Thus the potential vulnerability of a prosecutor to civil law suit when accompanying investigators in the execution of a warrant is obvious. It is a pitfall that is easily avoided.

A precautionary word--in those rare circumstances where the prosecutor's presence at warrant execution is deemed necessary, potential liability should be anticipated by articulating, on

the face of the search warrant, the specific reasons for the prosecutor's presence prior to execution of service.

2. The Need for Experts at Warrant Execution. The complexities and ingenuity of some white-collar crimes may require the use of experts at the time of warrant execution. Investigation of environmental pollution, computer crimes, and even fencing operations may demand the use of persons expert in a particular field.

The environmentalist may be needed to make tests of water, air, or equipment. The computer expert may have to run the target's program or even determine what materials are actually being handed over. On-site value appraisal may be necessary in the close down of a receiver of stolen goods.

Thought should always be given to the need for a photographer at warrant execution. The photos taken of the crime scene immediately after warrant execution may reveal the essence of the offense or how it was accomplished. The precise moment that the warrant is executed may very well prove to be the last time the crime scene can be preserved by photograph. This is especially true as to vital gauge readings in pollution cases, layouts of illegal gaming establishments, or auto rendering "chop" shops.

A major concern in the choice of an expert must be security. The more persons involved in an investigation, especially civilian personnel, the more likely it is that secrecy will be compromised. Police personnel should be used to the extent that their credentials and expertise will withstand cross-examination.

3. How and What Evidence Must Be Seized. The seizure of evidence pursuant to a search warrant is rarely a simple matter in white-collar crime investigations. There must be thorough preparation of the investigative personnel in the "story" of the case. They must fully understand what is being sought.



The relationship between certain items and the crime may not become clear until those items are actually encountered on the crime scene.<sup>6</sup>

It is likewise necessary that investigators know ahead of time what is to be found and seized at the scene. Personnel cannot be expected to persevere without absolute knowledge of what is expected of them. Of course, legal supervisory personnel should never be more than a phone call away from the scene. It is best that supervisors be contacted once the site has been secured and again when the search is about to be concluded.

The importance of these preparatory steps cannot be overestimated. Fully involving the investigative staff is a guarantee against inadvertent oversight at the crime scene. Such things as commercial calendars, names written on countertops, and photographs will provide clues only for the well-informed investigator. The nature of the evidence to be seized should also be the subject of a pre-execution briefing. Any problems which may be anticipated in the seizure should be discussed.

Evidence must be taken so as to preserve its existing condition, sequence, and identity. Any material alteration of evidence subsequent to the execution of the warrant is likely to be seen as a deliberate attempt by the government to subvert the truth. Special care must be given to computer tapes or any other evidence that can be damaged during seizure.

Thought should be given to the packaging of evidence at the crime scene. Boxes, as well as plastic bags, envelopes, and other appropriate containers, must be brought along for this purpose.

Mention should be made of the possible importance of fingerprints in white-collar crime investigations. The value of fingerprints as a means of positive identification or of determining personal involvement cannot be overlooked merely because there is no chalk outline of a corpse at the crime

scene. Latent prints not only can be lifted off countertops but also from books of account and even off a check or other piece of documentary evidence. The precautions taken in the course of street crime investigations to preserve fingerprints must be followed.

4. Who to Talk to and How. The moment of warrant execution may be the first and last time that investigative personnel can confront criminal suspects in the absence of their attorney. It is a time to be savored and utilized, not wasted.

As noted earlier, anyone not in custody can be talked to during the course of warrant execution. The nature of these conversations must, of course, be governed by the individual's relation to the investigation at hand.

Pre-execution planning should anticipate the mood of the persons on the location to be searched. Investigators should be aware of who is likely to cooperate. Informal means of isolation should be considered. For example, a secretary with no criminal responsibility but having great knowledge of corporate affairs may be taken aside for a conversation with investigators.

The treatment of persons on the search location of white-collar crime is somewhat unique. Persons unfamiliar with the role of "criminal suspect" feel a compulsion to explain things. They should be allowed to do so.

The help of people on the scene may facilitate the obtaining of evidence. The embarrassment of having investigators inside a "legitimate business establishment" is often a stimulus for cooperation.

For these reasons the demeanor of the investigator must be firm but polite. Personnel should be cautioned against the use of any force unless absolutely necessary. Rough language or even the slightest force may have a disproportionate impact on a corporate executive unfamiliar with standard police practice. The same executive is likely to be extremely articulate in describing any mistreatment--real, perceived, or fabricated:

Where practical, every person on the search scene should be at least casually interviewed. A determination should be made as to what knowledge each might have of the crime under investigation. Nothing should be assumed. A janitor may remember something strange about yesterday's trash; a secretary may know who has been calling the firm recently on a regular basis.

Questions concerning the nature of the evidence should be asked of persons on the scene during the course of warrant execution. Complete understanding of file systems, bookkeeping procedures, and management flow charts may provide vital investigative leads.

5. Preparation of an Inventory. Upon the completion of a search warrant execution, an inventory of items seized must be prepared. The inventory is merely a listing of the items. It is signed by someone, preferably the owner, on the premises at the time the warrant is executed. Most search warrant forms have a tear-away section for use as an inventory.

Special care must be taken in white-collar crime investigations to specifically identify seized property. For example, if records have been obtained they must be identified by date and position in sequence. Notice should be taken as to whether or not a complete set of records has been taken. If the items seized are in a damaged state, then that condition should be noted.

If articles of value are seized, they must be described with absolute specificity; if cash, serial numbers should be set forth on the inventory.

There must be no mistake in the listing of the number of items seized. A government prosecution for receiving stolen goods may be severely handicapped by the mere allegation that items seized were not recorded. It is suggested that the signed inventory indicate agreement that it represents a complete and accurate accounting of all items seized. Under certain circumstances, photos of the items are advisable.

Inventory lots or evidence in damaged condition are examples of evidence which may need to be photographed.

6. Problems of Execution. The execution of a search warrant for white-collar crime investigation does not provide carte blanche to conduct a complete, on-location, internal audit. As noted earlier the duration and inconvenience of the intrusion will be considered by the courts in their determination of "reasonableness," thus it is necessary to conduct the execution of the search warrant as expeditiously as possible.

As noted above, pre-execution planning is required. Thought should be given to how various types of evidence should be seized. For example, if the possibility or need for obtaining latent fingerprints exists, then the handling of such evidence must be given due consideration.

Problems in execution arise where the evidence to be seized can reasonably be expected to be found in relatively inaccessible locations--a locked wall safe, for example. In that instance a further complication is the inability to remove the safe from the premises. The first rule is firm but polite courtesy in requesting that the investigative target cooperate by opening the safe. If this fails, a second warrant should be considered.

Where the target firm has an immediate and apparent need for the items (records) to be seized, every effort must be made to make copies available to the suspect as soon as possible. The government's retention of originals, of course, serves as an effective safeguard against alteration.

A separate set of problems arises for the prosecutor when various locations must be searched at once. Unfortunately the need for coordinated warrants arises much more than their use. Almost any time that co-conspirators are identified and separate locations are suspected as having been employed in the furtherance of a scheme, the need for multiple execution of warrants should be considered. The logistics for such

maneuvers need not be overly burdensome provided extensive pre-execution discussion has taken place among investigators.

7. Consent Search. A well-recognized exception to the warrant requirement is the consensual search. Where an individual voluntarily submits to a personal search, or consents to the search of an area within his or her use or control, no warrant is required. The courts have found that apartment co-tenants, spouses, and parents have sufficient authority to allow consensual searches. The courts have also ruled that consent may be inferred from a defendant's formal agreement, oral affirmation, or actions. Cf. U.S. v. Fields, 458 F.2d 1194 (3d Cir 1972); U.S. v. Gaines, 441 F.2d 1122 (2d Cir. 1971).

Consent searches should be used with great reluctance by white-collar crime investigators. By definition, consent searches usually eliminate the element of surprise. Judges, as a practical matter, have great difficulty believing that business executives having complete understanding of their possible criminal jeopardy would nevertheless allow a warrantless search of their business premises. These doubts receive support from the counseled defendant who can later be heard to say that investigators misrepresented the nature of the investigation or the extent of individual involvement.

The best rule is to obtain written consent, eliminating any doubt concerning means of access. The written consent form should be set forth in detail. The area and extent of the search must be defined with particularity in anticipation of subsequent challenge. If possible, the reason for consent (e.g., desire to cooperate with law enforcement) should also be mentioned.

Variations on the theme of consent search occur with regard to extended searches of the same premises or subsequent probes of other locations under the control of the same subject. Once again, the warrant is the only legally certain means of access.

A solution to the problems of consent search is to join the request for permission to search with production of the warrant. If consent is not forthcoming, the warrant can be executed without delay.

8. Search Incident to Arrest. It has long been the law that police personnel may make a search incident to, and contemporaneous with, a lawful arrest. Thus the intent of the Court is not to encourage ruse or artifice in avoiding the mandates of Miranda. Rather, it is to recognize the legitimate investigative possibilities of face-to-face contact. Searches incident to arrest are, however, limited to the person and the area within his or her immediate control. See Chimel v. California, 395 U.S. 752, 89 S.Ct. 2034 (1969).

Although there is no question that the subject of any arrest should be searched, it is often unlikely that evidence of white-collar crime activity will be found on the person. It is therefore recommended that a separate search warrant be drafted for the premises of the anticipated arrest. The contemporaneous execution of arrest and search warrants also reduces the opportunity for destruction of evidence.

9. Emergency Search. A final exception to the warrant requirement arises where an emergency exists. If investigative personnel reasonably believe that unless they act promptly evidence will be destroyed, a felon will escape or is in hiding, they are justified in conducting a warrantless search.

The courts have been clear in their understanding of this concept. They have adopted a common sense balancing test between Fourth Amendment protections and the exigencies of law enforcement. It is not necessary to demonstrate absolute certainty of evidence destruction before taking emergency action.

The doctrine of emergency search has been extended to fit certain emergencies established by law. Federal officials may

stop and make warrantless vehicle searches near boundaries of the United States. See Henderson v. U.S., 390 F.2d 805 (9th Cir. 1967); 19 U.S.C. 1581(a) (1965).<sup>7</sup>

Although "emergency search" is often considered within the context of narcotics investigation, it is equally important to the probe of white-collar crime. A paper trail is easily erased. Books and records, not to mention penciled accounting entries and computer tapes, are subject to immediate destruction.

Legal recognition of the emergency search should not be lost on official personnel conducting administrative inspections. Behind-the-counter privacy does not protect the potential destruction of evidence.

A final warning, however, must be extended. The latitude provided by emergency search is limited in scope and narrowly defined. As noted earlier, the concept is in conflict with constitutional protections. The investigator conducting an emergency search must be prepared to articulate in detail the reasons for execution.

In recent companion cases, Payton v. New York, 27 Cr. L.R. 3033 (4/16/80), 100 S.Ct. 1371 (1980), and Riddick v. New York, 27 Cr. L.R. 3033, 100 S.Ct. 1371 (1980), the United States Supreme Court reaffirmed this principle. The Court noted that for Fourth Amendment purposes, an arrest warrant founded on probable cause carries with it the implicit authority to enter a building where a suspect lives. The Court specifically rejected the argument that police officers require probable cause to believe that the defendant is in a building when an arrest warrant is executed. It called such a requirement "manifestly impractical."

In the previously cited Payton v. New York, the Supreme Court declared unconstitutional a New York statute authorizing warrantless entry to make a routine felony arrest. The Court clearly expressed its respect for the sanctity of the home:

In terms that apply equally to seizures of property and seizures of persons, the Fourth Amendment has drawn a firm line at the entrance to the house. Absent exigent circumstances, that threshold may not reasonably be crossed without a warrant.<sup>8</sup>

## B. Post-execution Considerations

1. The Need for Rapid Analysis. Once evidence has been seized the investigator should conduct a rapid analysis. The management of the case requires it. There are likely to be legitimate concerns of both complainants and targets which can be dealt with only through expedient handling of the seized items.

As noted earlier, immediate attention must be given to problems of business dislocation, health risks, or mere inconvenience caused by the taking of business records.

If the offense is of a continuing nature, efforts must be made to identify unknown or potential victims. The likelihood of evidence housed at separate locations being destroyed increases with the length of time between the minute of warrant execution and subsequent government action.

Efforts should also be directed toward the return of seized evidence which is found to be irrelevant to the investigation. The observation of this simple courtesy may later serve as another example of the government's good faith pursuit of its inquiry.

2. Publication of Results in the Form of Consumer Warnings. The seizure of evidence in white-collar crimes which are likely to be of a continuous nature poses some unique problems. Although there may be insufficient evidence to warrant an arrest, evidence of criminal fraud may be clear. The dilemma faced by the government is whether to protect the public by exposing criminal misrepresentation or to allow criminal acts to take place at the public's expense.

Under most circumstances the public to be protected by warnings is a restricted group. There may be no need to make a general announcement. Telephone calls warning potential victims may be sufficient. There are, however, occasions when this is not enough. A warrant executed in the early stages of a business opportunity scheme might serve as an example. In that instance it is suggested that law enforcement personnel have an obligation to issue a public warning of general information dealing with the nature of the crime, without revealing specific details of the crime.

3. Broadening of the Complaint Base. The investigator should review seized evidence for purposes of broadening the complaint base as well as for contacting other potential victims. Sales and accounts receivable journals are especially useful in this regard. Inspection of these records may reveal a crime of far greater impact than that which was originally suspected.

Depending upon the number of victims identified, contact should be made by phone or mail. In either case the assigned attorney should confer with investigative personnel concerning the formulation of a uniform questionnaire. A record should be made of every contact, whether by phone or mail.

Although the practical considerations of case preparation and trial may place severe limitations upon the number of persons actually called to testify, documented identification of all victims is most useful in plea negotiation and sentencing recommendations.

4. Chain of Custody. The legal requirement of chain of custody refers to the linkage between the seizure of evidence and its appearance in court. Every hand through which the seized item has passed must be identified. Any alteration of evidence must be noted.

These considerations are extremely important in the preparation of white-collar crime cases. A lost file or the destruction of a computer tape may guarantee acquittal. Original documents should be duplicated and stored. It is rare that continuing investigation or case preparation will require the use of originals. It is the lead investigator's responsibility to see that persons testing documents or analyzing their contents note carefully the tests performed and results obtained.

### C. Further Considerations and Problems Unique to White-Collar Crime Investigation

1. The Special Search Warrant Problems Presented by Computers.<sup>9</sup> Computers have become as basic to business record keeping as ledgers and account journals. The likelihood that a computer will be either the object of a crime or used to perpetrate an offense increases daily. The nature of computer evidence, and the complexities of the systems which produce it, present special difficulties for the white-collar crime investigation.

Some of these problems have been alluded to earlier--such as the dense volume of evidence contained on a tape and the fragility of computer tapes. Sometimes the computer itself must be seized, or at least isolated, so as to safeguard it from tampering.

In order to secure a search warrant for computer evidence, technical proof of probable cause is likely to be necessary. Special care must be taken to describe the items to be seized so that each necessary component can be inspected. The warrant must be drafted in such a way as to be technically comprehensive yet understandable to the lay person.<sup>10</sup>

All this is to say that expert help is required at every stage of the search and seizure of computer evidence.

## V. CONCLUSION

The purpose of this manual is to guide law enforcement personnel through the legal maze of search warrant investigation, highlighting technical and practical considerations. It is intended to be a useful tool, and it is hoped that it will become tattered and worn through frequent use.

## ENDNOTES

<sup>1</sup>Robert Lawler, Search Warrant Check List, Philadelphia District Attorney's Office, November 9, 1979.

<sup>2</sup>See generally, Martin Belsky, "Criminal Procedure in Pennsylvania: The Pre-Trial Issues in Four Parts," Dickenson Law Review, Vol. 78, No. 2 (1973).

<sup>3</sup>The ongoing nature of the target business can be established in a number of ways: recent advertisements; Dun and Bradstreet or similar listings; and finally, a telephone call to the firm on the day that the warrant is to be executed. The warrant should indicate what response was received on answer of the telephone.

<sup>4</sup>See Belsky, op. cit.

<sup>5</sup>See Lawler, op. cit.

<sup>6</sup>Robert O'Neil, Investigative Planning (Seattle, WA: Battelle Law and Justice Study Center, 1979).

<sup>7</sup>Belsky, supra.

<sup>8</sup>Payton v. New York, 100 S.Ct. at 1371 (1980).

<sup>9</sup>See generally, Jay J. Becker, The Investigation of Computer Crime (Washington, D.C.: U.S. Government Printing Office, 1980).

<sup>9</sup>Ibid.

APPENDIX A

SEARCH WARRANT CHECKLIST\*

Use carefully the checklist in Pa. R. Crim. P. 2006 (below):

1. If information was obtained from another person, e.g., an informant, a private citizen, or fellow officer, state specifically what information was received, and how and when such information was obtained. State also the factual basis for believing such other person was reliable.
2. If surveillance was made, state what information was obtained by such surveillance, by whom it was obtained, and state date, time, and place of such surveillance.
3. State other pertinent facts within personal knowledge of affiant.
4. If "nighttime" search is requested (i.e., 10 p.m. to 6 a.m.) state additional reasonable cause for seeking permission to search in nighttime.
5. State reasons for believing that the items are located at the premises specified above.
6. State reasons for believing that the items are subject to seizure.

Every one of the following items, if applicable, should be included:

AFFIDAVIT OF PROBABLE CAUSE

1. How confidential informant or named citizen knows that seizable items are presently in the place to be searched:
  - a. date on which the affiant was told about the facts
  - b. date that the informant or citizen observed the facts
  - c. personal observation
  - d. where he made his observation
  - e. what facts, in detail, he observed
2. Why a confidential informant should be considered reliable:
  - a. number of occasions on which he gave information which proved to be accurate when verified by police

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\*Robert Lawler, Philadelphia District Attorney's Office,  
November 9, 1979.

- b. nature of such information
- c. how it was verified, when, and by whom

AND/OR

- d. number of cases resulting in: arrest, held for court, convictions, including the category of offense and period of time covered by such cases

3. Why the named citizen is reliable:

- a. name and address
- b. age and occupation
- c. family
- d. appearance, sobriety, and manner of speaking

4. Police surveillance:

- a. who conducted it
- b. when, including dates and times
- c. where
- d. what exactly was observed
- e. why such observations tend to prove that the information supplied to police was accurate

DESCRIPTION OF PLACE TO BE SEARCHED

1. Buildings:

- a. street address, including for apartments, the number or letter designation or, at least, its location within the building
- b. physical appearance of building, including number of stories, building material, color
- c. location relative to other building or street intersections
- d. use by the suspect, e.g., residence of John Doe

2. Vehicles:

- a. manufacturer and year
- b. color and body style
- c. license number

DESCRIPTION OF PROPERTY TO BE SEIZED

- 1. Nature of the property
- 2. Appearance, including size, color, packaging
- 3. Manufacturer
- 4. Serial number
- 5. Relationship of evidence to crime (e.g., bloody clothing due to extensive blood splattering at crime scene).

NIGHTTIME SEARCHES (10 p.m. to 6 a.m.)

- 1. Identify "special reasonable cause" (Rule 2003, 2005) for nighttime search, e.g., violent crime committed shortly before, with likelihood evidence will be destroyed or disposed of.



APPENDIX B

SAMPLE SEARCH WARRANTS

42

Commonwealth of Pennsylvania

CITY AND COUNTY OF PHILADELPHIA

SEARCH WARRANT AND AFFIDAVIT

VOID-TO BE USED FOR EDUCATIONAL PURPOSES ONLY

WARRANT CONTROL NO. 49361

ISSUED TO DIST./UNIT D.A.

DATE OF APPLICATION 7-31-79

IDENTIFY ITEMS TO BE SEARCHED FOR AND SEIZED (Be as specific as possible):

All company records pertaining to D.V.T., Inc.; Let's Dance Entertainment Corp., Integrity Financial Services, and any other business operated at that location, dating from February 8, 1979 to the date of this warrant.

SPECIFIC DESCRIPTION OF PREMISES AND/OR PERSONS TO BE SEARCHED (Street and No., Apt. No., Vehicle, Safe Deposit Box, etc.):

Office suite number 806 of the Fox Building, located at 1612 Market Street, Philadelphia, Pennsylvania.

NAME OF OWNER, OCCUPANT OR POSSESSOR OF SAID PREMISES TO BE SEARCHED (If proper name is unknown, give alias and/or description):

David V. Thomas a/k/a Donald Thomas

VIOLATION OF (Describe conduct or specify statute):

Theft § 3921, Theft by Deception § 3922, Forgery § 4101, Conspiracy § 903.

PROBABLE CAUSE BELIEF IS BASED ON THE FOLLOWING FACTS AND CIRCUMSTANCES (See special instructions below):

Your affiant, District Attorney's Detective Frederick Hoesle, Badge #81, is assigned to the Economic Crime Unit of the Investigations Division of the District Attorney's Office.

The Economic Crime Unit is conducting an investigation into allegations of the theft and deceptive practices of David Thomas operating under various names, including but not limited to David Thomas, Donald Thomas, D.V.T., Inc., Let's Dance Entertainment Corp., Integrity Financial Services.

This investigation began in June, 1978 and has led to the arrest of David Thomas on November 13, 1978 and again on March 15, 1979, all cases being held for court. This investigation has disclosed that while on bail from his last arrest, six additional persons have suffered a loss totalling in excess of \$36,000. These persons have been victimized by the same scheme for which Thomas was arrested and held for court. In the prior cases, David V. Thomas had used false identities and business names while operating from an office.

ATTACH ADDITIONAL PAPER (75-51) IF NECESSARY. CHECK HERE IF ADDITIONAL PAPER IS USED. (Cont.)

SIGNATURE OF AFFIANT

COURT LOCATION

PLEASE READ AND FOLLOW THESE INSTRUCTIONS CAREFULLY

1. If information was obtained from another person, e.g., an informant, a private citizen, or a fellow law officer, state specifically what information was received, and how and when such information was obtained. State also the factual basis for believing such other person to be reliable.

2. If surveillance was made, state what information was obtained by such surveillance, by whom it was obtained, and state date, time and place of such surveillance.

3. State other pertinent facts within personal knowledge of affiant.

4. If "nighttime" search is requested (i.e., 10 P.M. to 6 A.M.) state additional reasonable cause for seeking permission to search in nighttime.

5. State reasons for believing that the items are located at the premises and/or on the person specified above.

6. State reasons for believing that the items are subject to seizure.

7. State any additional information considered pertinent to justify this application.

TO LAW ENFORCEMENT OFFICER: WHEREAS, facts have been sworn to or affirmed before me by written affidavit(s) attached hereto from which I have found probable cause, I do authorize you to search the above described premises or person, and to seize, secure, inventory, and make return according to the Pennsylvania Rules of Criminal Procedure, the above described items.

\* This Warrant should be served as soon as practicable but in no event later than \_\_\_\_\_ A.M. \_\_\_\_\_ P.M., 19\_\_\_\_, and shall be served only during daytime hours of 6 A.M. to 10 P.M.

Issued under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_ M o'clock, (Issue time must be stated)

(SEAL) \_\_\_\_\_ (Signature of Issuing Authority)

Court location \_\_\_\_\_

Date Commission Expires \_\_\_\_\_ Title of Issuing Authority \_\_\_\_\_

\* The issuing authority should specify a date not later than two (2) days after issuance. P.A. R. Crim. P. 200.5(d).

\*\* If issuing authority finds reasonable cause for issuing a nighttime warrant on the basis of additional reasonable cause set forth in the accompanying affidavits and wishes to issue a nighttime search warrant, only this section shall be completed. P.A. R. Crim. 200.6(b).

75-175 (Rev. 3/75) ORIGINAL APPLICATION-RETAINED BY ISSUING AUTHORITY. JP Crim Form 74-R200L

43

PHILADELPHIA POLICE DEPARTMENT

INVESTIGATION REPORT

YR. DIST. OF OCCUR. DC NO. (1-7) INITIAL (49) SUPPLEMENTAL (52) CONTINUATION (51) SHEET 2 of 5

PREVIOUS CLASSIFICATION CODE CLASSIFICATION CODE (14-17) PLACE OF OCCURRENCE (18-14) J.A.D. INVESTIGATIONS (13) JUVENILE OFFENDERS 1. Male 2. Female 3. Offenders

COMPLAINANT (Use firm name) (10-32) AGE RACE (82) SEX (83) ADDRESS PHONE

TYPE OF PREMISES (11-51) DATE AND TIME REPORTED REPORTED BY ADDRESS

DATE OF OCCURRENCE (10-61) DAY CODE (62) TIME (61-65) FOUNDED (66) STATUS 1. Active 2. Inactive - not cleared 3. Arrest - cleared 4. Exceptionally cleared

STOLEN PROPERTY (68) 1. Currency, Bonds, etc. 2. T.V., Radio, Stereo 3. Office Equipment 4. Jewelry, Precious Metals 5. Household Items (Furniture, Washers) 6. Consumer Items (Liquor, Cigarettes, etc.) 7. Autos 8. Clothing 9. Firearms 10. Furs 11. Misc. Live 12. Sk. PROPERTY VALUE (69-71) RECOVERED VALUE (72-78) INSURED OCCURRENCE (79)

PROBABLE CAUSE (CONT.)

SEARCH WARRANT #49361

located at 1422 Chestnut Street, Suite 301. From that address, accused telephoned businesses dealing in the manufacture and/or distribution of either office business machines or audio disco equipment. Defendant ordered equipment by phone, agreeing to pay upon delivery of said equipment with a certified or cashier's check. The shipments were sent either to 1422 Chestnut St. or 3500 Lindbergh Blvd., Suite 1711, Philadelphia, Pa., the defendant's residence at the time of his arrest. In the earlier cases, the equipment was paid for with checks bearing a forged certification stamp and drawn on closed bank accounts. The total lost to the 12 victims of these cases was \$38,180.00.

The instant warrant involves complaints received from victims located outside of Philadelphia County. All are merchants that advertise in trade journals and magazines, the sale of typewriters, calculators, cash registers or office furniture.

Affiant has interviewed all of the victims either by telephone or in person and has obtained from those victims all documentation in the form of invoices, purchase orders, shipping documents, and the certified checks by which payment was made.

An examination of the shipping records by affiant and a conversation with representatives of the shipping companies confirms that the merchandise sold by the victims was either picked up by the accused (or one of his representatives), or delivered to office of accused at 1612 Market Street, Philadelphia, Pa. Officers of the bank on which the certified checks were drawn in payment for the merchandise ordered by the accused confirmed that the banks refused to honor the checks because of the forged certification affixed to the checks.

Affiant obtained from Bell Telephone Co. of Pennsylvania under Search Warrants #49333, dated 4/10/79, signed by Judge Glancey and #49346, dated 6/11/79, signed by Judge Cosgrove, all toll calls made from the telephone numbers 215-475-1413, 215-563-1004, 1005 and 1006. Affiant also obtained the locations of those telephones. Number 215-476-1413 was located at 5322 Spruce Street in Philadelphia where the accused had resided with his wife and mother-in-law. Numbers 215-1004, 1005 and 1006 are located at Suite 806 of the Fox Building, 1612 Market Street, Philadelphia, Pa.

Affiant contacted Charles Jackson, a representative for Albert Greenfield and Company who leases the offices in the Fox Building. His information confirmed that the accused, using the name Donald Thomas, did lease the suite 806 at that location from March 1, 1979 to April 1, 1979 and did lease Suite (Cont.)

INVESTIGATOR (Type and Sign Name) SERGEANT LIEUTENANT

75-49 (Rev. 12/74)

## INVESTIGATION REPORT

45

PHILADELPHIA POLICE DEPARTMENT

Y.R.	DIST. OF OCCUR.	DC NO. (1-7)	INITIAL (49)	<input type="checkbox"/> Class. Change	DISTRICT (18-9)	SECTOR (110)
PREVIOUS CLASSIFICATION	CODE	SUPPLEMENTAL (52)	<input type="checkbox"/> Status Change	DIST./UNIT PREPARING	CODE (11-12)	REPORT DATE
		Continuation (51)	<input type="checkbox"/> Additional info.			
		Sheet 3 of 5	<input type="checkbox"/> Court Disposition			
CLASSIFICATION	CODE (14-17)	PLACE OF OCCURRENCE (18-14)	J.A.D. INVESTIGATIONS (33)	Juvenile Offenders		
			1. <input type="checkbox"/> Male	2. <input type="checkbox"/> Female	3. <input type="checkbox"/> Offenders	
COMPLAINANT (Use firm name) (10-32)	AGE (14-17)	RACE (18-2)	SEX (18-1)	ADDRESS		PHONE
		1. <input type="checkbox"/> W 3. <input type="checkbox"/> C 5. <input type="checkbox"/> D	1. <input type="checkbox"/> M 2. <input type="checkbox"/> F			
TYPE OF PREMISES (11-15)	DATE AND TIME REPORTED	REPORTED BY	ADDRESS			
DATE OF OCCURRENCE (15-6-1)	DAY CODE (16-2)	TIME (16-1-4-1)	FOUNDED (16-1)	STATUS (16-7)	1. <input type="checkbox"/> Active	3. <input type="checkbox"/> Arrest - cleared
			<input type="checkbox"/> Yes <input type="checkbox"/> No	2. <input type="checkbox"/> Inactive - not cleared	4. <input type="checkbox"/> Exceptionally cleared	UNIT
STOLEN PROPERTY (16-8)	1. <input type="checkbox"/> Currency, Bonds, etc.	4. <input type="checkbox"/> Jewelry, Precious Metals	7. <input type="checkbox"/> Autos	A. <input type="checkbox"/> Furs	PROPERTY VALUE (16-9-1)	RECOVERED VALUE (16-9-2)
	2. <input type="checkbox"/> T.V., Radio, Stereo	5. <input type="checkbox"/> Household Items (Furniture, Washers)	8. <input type="checkbox"/> Clothing B. <input type="checkbox"/> Misc.			
	3. <input type="checkbox"/> Office Equipment	6. <input type="checkbox"/> Consumer Items (Liquor, Cigarettes, etc.)	9. <input type="checkbox"/> Firearms C. <input type="checkbox"/> Live			

## PROBABLE CAUSE (CONT.)

SEARCH WARRANT #49361

806 at that location commencing April 1, 1979 through February, 1981, for purpose of using the office to conduct a sales office and entertainment service.

On March 14, 1979, affiant spoke with Mr. Al Mucciarone, a representative of Citizens America Corporation, a manufacturer of typewriters, located in Santa Monica, California. He told affiant that a male identifying himself as Edwin Jones of Integrity Business Sales, located in Lindenwold, New Jersey, telephone 215-476-1413, called on 2/8/79 and again on 2/12/79. As a result of these calls, two shipments totalling 48 typewriters, valued at \$8789.80, were forwarded by Citizens America Corp. to the Lindenwold address. Both shipments were picked up at the freight forwarding depots on 2/22/79 and 3/1/79 and paid with checks bearing a false stamp certification drawn on a closed account #7-950-189 of Germantown Savings Bank. An employee at one of these freight forwarding depots identified the defendant as the individual who received and signed for the shipment.

Mr. Mucciarone's statement concerning the check payments have been verified by affiant's review of the bank records of Germantown Savings Bank.

Pacific Bell Telephone records show calls made on Citizens America Corp. WATS line, 800-421-6516, on 2/26/79 at 12:14 PM and 1:12 PM and again on 3/1/79 at 8:19 AM and 8:26 AM from telephone number 215-476-1413. Bell Telephone of Pennsylvania's records indicate that this telephone was located at 5322 Spruce Street, the address given by the defendant as his residence on 3/15/79 when arrested.

On April 19, 1979, affiant spoke with Mr. Thomas Coyle, President of T.C.A. Incorporated, a manufacturer of cash registers, located in Morrisville, Pa. He told affiant that a male identifying himself as Mr. Blake from Integrity Business Machines in Lindenwold, N. J. called on 4/2/79 at 12:02 PM. As a result of this call an order for 18 cash registers, totalling \$12,000.00 was picked up on 4/2/79 and paid with a check bearing a false stamp certification drawn on a closed account, #2-950-215 of Germantown Savings Bank. Mr. Coyle's statement concerning the check payment has been verified by affiant's review of the bank records of Germantown Savings Bank. The employee that relinquished the shipment stated the individual that received and paid for it was driving a tan van bearing New Jersey license plates #153-KH0. A check with New Jersey Department of Motor Vehicles revealed the vehicle registered to a Mr. Bruce Williams at 2938 Berkley St., Camden, N. J. The name Bruce Williams appears in the business records of the defendant confiscated at his time of arrest. Bell Telephone records for 1612 Market St., Suite 806, Philadelphia, PA., the location of the office leased by the defendant show (Cont.)

INVESTIGATOR (Type and Sign Name)	SERGEANT	LIEUTENANT

75-49 (Rev. 12-74)

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## INVESTIGATION REPORT

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PHILADELPHIA POLICE DEPARTMENT

PR.	DIST. OF OCCUR.	DC NO. (1-7)	INITIAL (49)	<input type="checkbox"/> Class. Change	DISTRICT (8-9)	SECTOR (10)
PREVIOUS CLASSIFICATION	CODE	SUPPLEMENTAL (52)	<input type="checkbox"/> Status Change	DIST./UNIT PREPARING	CODE (11-12)	REPORT DATE
CLASSIFICATION	CODE (13-14)	Continuation (51) Sheet 4 of 5	<input type="checkbox"/> Additional Info.	J.A.D. INVESTIGATIONS (33)	Juvenile Offenders Adult	
COMPLAINANT (Use firm name) (16-32)	AGE (33-34)	RACE (35)	SEX (36)	1. <input type="checkbox"/> Male 2. <input type="checkbox"/> Female 3. <input type="checkbox"/> Offenders	ADDRESS	PHONE
TYPE OF PREMISES (31-32)	DATE AND TIME REPORTED	REPORTED BY	ADDRESS	STATUS 1. <input type="checkbox"/> Active 2. <input type="checkbox"/> Inactive - not cleared 3. <input type="checkbox"/> Arrest - cleared 4. <input type="checkbox"/> Exceptionally cleared	UNIT	
STOLEN PROPERTY (40)	1. <input type="checkbox"/> Currency, Bonds, etc. 2. <input type="checkbox"/> T.V., Radio, Stereo 3. <input type="checkbox"/> Office Equipment	4. <input type="checkbox"/> Jewelry, Precious Metals 5. <input type="checkbox"/> Household Items (Furniture, Washers) 6. <input type="checkbox"/> Consumer Items (Liquor, Cigarettes, etc.)	7. <input type="checkbox"/> Autos 8. <input type="checkbox"/> Clothing 9. <input type="checkbox"/> Firearms	A. <input type="checkbox"/> Furs B. <input type="checkbox"/> Misc. Live C. <input type="checkbox"/> S.K.	PROPERTY VALUE (41-42)	RECOVERED VALUE (43-44)

## PROBABLE CAUSE (CONT.)

## SEARCH WARRANT #49361

that a call was made from that address to T.C.A., Inc., in Morrisville, Pa., at 12:02 AM on the 4/2/79, the precise time reported by Mr. Coyle.

On April 19, 1979, affiant spoke with Mr. Thomas Maloney, a representative of Sidney L. Karp Co., Inc., a distributor of business machines, located in Jersey City, N. J. He told affiant that a male identifying himself as Richard Blake from Integrity Business Products in Lindenwood, N. J. called twice on 4/3/79, at 12:44 PM and 1:20 PM. As a result of these calls an order for 24 calculators and 8 typewriters, valued at \$5324.00 was picked up on 4/4/79 and paid with a check bearing a false stamp certification drawn on a closed account #2-950215 of Germantown Savings Bank. Mr. Maloney statement concerning the check payment was verified by affiant's review of the bank records of Germantown Savings Bank. The employee for the complainant stated the shipment was picked up by an individual driving a tan van. The identical description of the vehicle used in the pick up of the shipment at TCA, Inc. Bell Telephone records for 1612 Market Street, Suite 806, Philadelphia, Pa., the location of the office leased by the defendant show that two calls were made from that address to Sidney L. Karp Co., Inc., at 12:44 PM and again 1:20 PM on 4/3/79, the precise time reported by Mr. Maloney.

On April 26, 1979, affiant spoke with Mrs. Carole Gribble, co-owner of Pacific Wholesale Office Equipment Co., a distributor of business machines located in Los Angeles, California. She told affiant that a male identifying himself as Edwin Jones of Integrity Business Products located in Sharon Hill, Pa., telephone number 215-476-1413, called on 2/8/79, 2/9/79, 2/13/79, 2/20/79 and 2/21/79. As a result of these calls 6 shipments were made totalling 24 telephone answering machines, 8 typewriters and one television, valued at \$7578.00. All of the shipments were marked hold at freight forwarding for pick up, with instructions to notify the defendant at his residence. Said residence confirmed by the records of Bell Telephone of Pennsylvania. All of the shipments were picked up at the freight forwarding depots on 2/15/79, 2/23/79 and 2/26/79 and paid with checks bearing false stamp certifications, drawn on closed accounts #0470-4034 at Philadelphia National Bank and #426-508 at Girard Bank. Bell Telephone records for 5322 Spruce Street, Philadelphia, Pa., the address given by the defendant on 3/15/79 at the time of his arrest, as his residence show that a call was made from that address to Pacific Wholesale at 2:50 PM on 2/21/79. In addition, Pacific Bell Telephone records for Pacific Wholesale Office Equipment Co. at 643 South San Pedro, Los Angeles, California, show calls made to the defendant's residence at 12:26 PM on 2/8/79, 3:35 PM on 2/12/79, 1:06 PM on 2/20/79 and 12:25 PM on 2/21/79, the precise times and dates reported by Mrs. Gribble.

(Cont.)

INVESTIGATOR (Type and Sign Name)	SERGEANT	LIEUTENANT
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15-49 (Rev. 12-74)

## INVESTIGATION REPORT

47

PHILADELPHIA POLICE DEPARTMENT

PR.	DIST. OF OCCUR.	DC NO. (1-7)	INITIAL (49)	<input type="checkbox"/> Class. Change	DISTRICT (8-9)	SECTOR (10)
PREVIOUS CLASSIFICATION	CODE	SUPPLEMENTAL (52)	<input type="checkbox"/> Status Change	DIST./UNIT PREPARING	CODE (11-12)	REPORT DATE
CLASSIFICATION	CODE (13-14)	Continuation (51) Sheet 5 of 5	<input type="checkbox"/> Additional Info.	J.A.D. INVESTIGATIONS (33)	Juvenile Offenders Adult	
COMPLAINANT (Use firm name) (16-32)	AGE (33-34)	RACE (35)	SEX (36)	1. <input type="checkbox"/> Male 2. <input type="checkbox"/> Female 3. <input type="checkbox"/> Offenders	ADDRESS	PHONE
TYPE OF PREMISES (31-32)	DATE AND TIME REPORTED	REPORTED BY	ADDRESS	STATUS 1. <input type="checkbox"/> Active 2. <input type="checkbox"/> Inactive - not cleared 3. <input type="checkbox"/> Arrest - cleared 4. <input type="checkbox"/> Exceptionally cleared	UNIT	
STOLEN PROPERTY (40)	1. <input type="checkbox"/> Currency, Bonds, etc. 2. <input type="checkbox"/> T.V., Radio, Stereo 3. <input type="checkbox"/> Office Equipment	4. <input type="checkbox"/> Jewelry, Precious Metals 5. <input type="checkbox"/> Household Items (Furniture, Washers) 6. <input type="checkbox"/> Consumer Items (Liquor, Cigarettes, etc.)	7. <input type="checkbox"/> Autos 8. <input type="checkbox"/> Clothing 9. <input type="checkbox"/> Firearms	A. <input type="checkbox"/> Furs B. <input type="checkbox"/> Misc. Live C. <input type="checkbox"/> S.K.	PROPERTY VALUE (41-42)	RECOVERED VALUE (43-44)

## PROBABLE CAUSE (CONT.)

## SEARCH WARRANT #49361

On June 20, 1979, affiant spoke with Mr. Brad Harris, a representative of General Wholesale Products, a distributor of office equipment, located in Houston, Texas. He told affiant that on 3/15/79 he received a mail order accompanied by a check for the amount of \$1372.35 drawn on Philadelphia National Bank account #0410-4034. As a result of this order 2 shipments were made, one on 3/19/79 and one on 3/28/79 to "Let's Dance" at 1612 Market St., Suite 608, Philadelphia, Pa., the location that the defendant was leasing at that time. Both shipments contained office furniture and equipment valued at \$1372.35. The check was subsequently returned to the complainant stamped "Account Closed." Mr. Harris' statement concerning the check payment has been verified by affiant's review of the bank records of Philadelphia National Bank. Bell Telephone records for 1612 Market St., Suite 608, Philadelphia, Pa., the location that the defendant has been leasing from 3/1/79 to 4/1/79 and Suite 806, at that address, that the defendant has been leasing since 4/1/79, show calls made from those locations to General Wholesale Products in Houston, Texas, at 12:31 pm, 2:00 pm, and 5:26 pm on 3/26/79, at 12:33 pm on 3/27/79, at 11:55 am on 4/5/79, and at 3:05 pm on 5/11/79, the precise times and dates reported by Mr. Harris.

On or about 9:30 am on the 31st July, 1979, Detective Joseph Mongelluzzo, assigned to the District Attorney's Office, did go to the location 1612 Market St., Suite 806, and did observe posted on the door at that location "D.V.T. Inc., Integrity Financial Services, Inc., and Let's Dance Entertainment." He did enter the premises and did observe business being conducted in a normal fashion.

On or about 10:00 am on July 31, 1979, Detective Joseph Mongelluzzo did call radio station WZZD at 242-6300 and spoke with James Gallagher, Advertising Sales Person, who stated that Let's Dance Entertainment, Inc. is advertising on WZZD at the present.

In addition, based upon the foregoing, your affiant believes that business records of various businesses run by David V. Thomas are presently at Suite 806, 1612 Market St., Philadelphia, Pennsylvania.

INVESTIGATOR (Type and Sign Name)	SERGEANT	LIEUTENANT
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15-49 (Rev. 12-74)

<b>Commonwealth of Pennsylvania</b>		APPLICATION FOR <b>SEARCH WARRANT</b> AND AFFIDAVIT
CITY AND COUNTY OF PHILADELPHIA		
<b>VOID-TO BE USED FOR EDUCATIONAL PURPOSES ONLY</b>		WARRANT CONTROL NO. <b>VOIDED-SAMPLE</b> 36653
(Name of Affiant) _____ being duly sworn (or affirmed) before me according to law, deposes and says that there is probable cause to believe that certain property is evidence of or the fruit of a crime or is contraband or is unlawfully possessed or is otherwise subject to seizure, and is located at particular premises or in the possession of particular person as described below.		ISSUED TO DIST./UNIT D. A.'s Office
IDENTIFY ITEMS TO BE SEARCHED FOR AND SEIZED (Be as specific as possible): 1. The financial books and records of Ben Soloff, Inc., for the period January, 1977, through February, 1978, including, but not limited to all receipts, correspondence, and documentation of any kind relating to all City Contracts. 2. Gorton Group Blue Water brand labels		DATE OF APPLICATION _____
SPECIFIC DESCRIPTION OF PREMISES AND/OR PERSONS TO BE SEARCHED (Street and No., Apt. No., Vehicle, Safe Deposit Box, etc.): Ben Soloff, Inc., Offices and Storage area inside Industrial Gold Storage and Warehouse Inc., located on Berks St. between American and Phillipe St. on the north side.		
NAME OF OWNER, OCCUPANT OR POSSESSOR OF SAID PREMISES TO BE SEARCHED (If proper name is unknown, give alias and/or description): Ben Soloff		
VIOLATION OF (Describe conduct or specify statute): C.P.S.A. § 3922 Theft by Deception C.P.S.A. § 4107 Deceptive Business Practices		YEAR/DIST./COMPLAINT NO. _____
PROBABLE CAUSE BELIEF IS BASED ON THE FOLLOWING FACTS AND CIRCUMSTANCES (See special instructions below): On January 19, 1978, assigned received information from Marilyn Kutler, Assistant Deputy Solicitor, concerning suspect counterfeit labeling on seafood packages purchased by the City of Philadelphia pursuant to Contract #8-06051 received at the Riverview Home for the Aged on September 22, 1977.  On August 9, 1977, Ben Soloff, Inc. submitted a bid to meet a City contract to supply 1360 lbs. of Blue Water brand cod fish fillets at \$.75 a lb. and 180 lbs of Blue Water fillet at \$1.50 per lb. The bid was awarded to Soloff on August 16, 1977. On September 22, 1977, the fish was delivered to Riverview. The items had been shipped from the American and Berks location cited above. On September 23, 1977, the fish was served. It was found to be of lesser quality and different type from that which had been bid upon.  Blue Water is a corporate division of the Gorton Group, Gloucester, Mass. The Philadelphia sales representative of Gorton, George Williams, was shown the labels appearing on the fish received from Soloff on September 22, 1977. It was his opinion that both		
ATTACH ADDITIONAL PAPER (75-51) IF NECESSARY <input type="checkbox"/> CHECK HERE IF ADDITIONAL PAPER IS USED.		
SIGNATURE OF AFFIANT _____ BADGE NO. _____ DIST./UNIT _____	Sworn to (or affirmed) and subscribed before me this _____ day of _____ 19_____ _____ (Signature of Issuing Authority) (SEAL)	
COURT LOCATION _____ Date Commission Expires _____		
<b>PLEASE READ AND FOLLOW THESE INSTRUCTIONS CAREFULLY</b>		
1. If information was obtained from another person, e.g., an informant, a private citizen, or a fellow law officer, state specifically what information was received, and how and when such information was obtained. State also the factual basis for believing such other person to be reliable. 2. If surveillance was made, state what information was obtained by such surveillance, by whom it was obtained, and state date, time and place of such surveillance. 3. State other pertinent facts within personal knowledge of affiant. 4. If "nighttime" search is requested (i.e., 10 P.M. to 6 A.M.) state additional reasonable cause for seeking permission to search in nighttime. 5. State reasons for believing that the items are located at the premises and/or on the person specified above. 6. State reasons for believing that the items are subject to seizure. 7. State any additional information considered pertinent to justify this application.		
<b>TO LAW ENFORCEMENT OFFICER:</b> WHEREAS, facts have been sworn to or affirmed before me by written affidavit(s) attached hereto from which I have found probable cause, I do authorize you to search the above described premises or person, and to seize, secure, inventory, and make return according to the Pennsylvania Rules of Criminal Procedure, the above described items.		
<input type="checkbox"/> This Warrant should be served as soon as practicable but in no event later than _____ A.M. _____ P.M. _____, 19_____ and shall be served only during daytime hours of 6 A.M. to 10 P.M. Issued under my hand this _____ day of _____, 19_____, at _____ M o'clock. (Issue time must be stated) (SEAL) _____ (Signature of Issuing Authority)	<input type="checkbox"/> This Warrant should be served as soon as practicable but in no event later than _____ A.M. _____ P.M. _____, 19_____ and may be served anytime during day or night. Issued under my hand this _____ day of _____, 19_____, at _____ M o'clock. (Issue time must be stated) (SEAL) _____ (Signature of Issuing Authority)	
Court location _____ Title of Issuing Authority _____ Date Commission Expires _____		
* The issuing authority should specify a date not later than two (2) days after issuance. PA, R. Crim. P. 2005(d). ** If issuing authority finds reasonable cause for issuing a nighttime warrant on the basis of additional reasonable cause set forth in the accompanying affidavits and wishes to issue a nighttime search warrant, only this section shall be completed. PA, R. Crim. 2006(b).		

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## INVESTIGATION REPORT

50

PHILADELPHIA POLICE DEPARTMENT

YR.	DIST. OF OCCUR.	DC NO. (1-7)	INITIAL (49)	<input type="checkbox"/> Class. Change <input type="checkbox"/> Status Change <input type="checkbox"/> Additional Info. <input type="checkbox"/> Court Disposition	DISTRICT (8-9)	SECTOR (10)
PREVIOUS CLASSIFICATION			CODE	SUPPLEMENTAL (52) Continuation (51) Sheet 2 of 3	DIST./UNIT PREPARING	REPORT DATE
CLASSIFICATION			CODE (14-17)	PLACE OF OCCURRENCE (18-19)	J.A.O. INVESTIGATIONS (33) 1. <input type="checkbox"/> Male 2. <input type="checkbox"/> Female 3. <input type="checkbox"/> Offenders	Juvenile Offenders Adult
COMPLAINANT (Use form name) (36-52)			AGE (40-43) 1. <input type="checkbox"/> W 2. <input type="checkbox"/> M 3. <input type="checkbox"/> F 4. <input type="checkbox"/> PR 5. <input type="checkbox"/> JO 6. <input type="checkbox"/> F	RACE (44) 1. <input type="checkbox"/> W 2. <input type="checkbox"/> M 3. <input type="checkbox"/> F 4. <input type="checkbox"/> PR 5. <input type="checkbox"/> JO 6. <input type="checkbox"/> F	SEX (45) 1. <input type="checkbox"/> M 2. <input type="checkbox"/> F	ADDRESS PHONE
TYPE OF PREMISES (53-55)	DATE AND TIME REPORTED	REPORTED BY	ADDRESS			
DATE OF OCCURRENCE (56-61)	DAY CODE (62)	TIME (63-65)	FOUNDED (66) <input type="checkbox"/> Yes <input type="checkbox"/> No	STATUS (67) 1. <input type="checkbox"/> Active 2. <input type="checkbox"/> Inactive - not cleared 3. <input type="checkbox"/> Arrest - cleared 4. <input type="checkbox"/> Exceptionally cleared	UNIT	
STOLEN PROPERTY (68) 1. <input type="checkbox"/> Currency, Bonds, etc. 2. <input type="checkbox"/> T.V., Radio, Stereo 3. <input type="checkbox"/> Office Equipment	4. <input type="checkbox"/> Jewelry, Precious Metals 5. <input type="checkbox"/> Household Items (Furniture, Washers) 6. <input type="checkbox"/> Consumer Items (Liquor, Cigarettes, etc.)	7. <input type="checkbox"/> Autos A <input type="checkbox"/> Furs 8. <input type="checkbox"/> Clothing B <input type="checkbox"/> Misc. 9. <input type="checkbox"/> Firearms C <input type="checkbox"/> Live	PROPERTY VALUE (69-73) \$	RECOVERED VALUE (74-78) \$	INSURED <input type="checkbox"/> Yes <input type="checkbox"/> No	OCCURRENCE (79) <input type="checkbox"/> Inside <input type="checkbox"/> Out

## CONT. ITEMS TO BE SEIZED, SEARCH WARRANT #36653

1. Rubber stamps (4) Haddock-Cod-92 Blue Water labels, B/W, No I.D.; 96 labels, Haddock--68 various product labels--Riverview
2. File--1 frozen Blue Water Cod W/B labels--1 frozen Blue Water portion labels--cash disp. book--cash rec. book--payable book--receivables; approximately 5,000 labels, various product names, B/W.
3. Haddock Hand Stamp
4. Printer's Bills
5. Product boxes on which counterfeit Blue Water labels may appear.

## CONT. DESCRIPTION OF PREMISES, SEARCH WARRANT #36653

A large multi-storied brock building, no windows

Affiant \_\_\_\_\_ Badge No. \_\_\_\_\_ Date \_\_\_\_\_

J. \_\_\_\_\_ Date \_\_\_\_\_

PAGE TWO

INVESTIGATOR (Type and Sign Name)	SERGEANT	LIEUTENANT
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## INVESTIGATION REPORT

51

PHILADELPHIA POLICE DEPARTMENT

YR.	DIST. OF OCCUR.	DC NO. (1-7)	INITIAL (49)	<input type="checkbox"/> Class. Change <input type="checkbox"/> Status Change <input type="checkbox"/> Additional Info. <input type="checkbox"/> Court Disposition	DISTRICT (8-9)	SECTOR (10)
PREVIOUS CLASSIFICATION			CODE	SUPPLEMENTAL (52) Continuation (51) Sheet 2 of 3	DIST./UNIT PREPARING	REPORT DATE
CLASSIFICATION			CODE (14-17)	PLACE OF OCCURRENCE (18-19)	J.A.O. INVESTIGATIONS (33) 1. <input type="checkbox"/> Male 2. <input type="checkbox"/> Female 3. <input type="checkbox"/> Offenders	Juvenile Offenders Adult
COMPLAINANT (Use form name) (36-52)			AGE (40-43) 1. <input type="checkbox"/> W 2. <input type="checkbox"/> M 3. <input type="checkbox"/> F 4. <input type="checkbox"/> PR 5. <input type="checkbox"/> JO 6. <input type="checkbox"/> F	RACE (44) 1. <input type="checkbox"/> W 2. <input type="checkbox"/> M 3. <input type="checkbox"/> F 4. <input type="checkbox"/> PR 5. <input type="checkbox"/> JO 6. <input type="checkbox"/> F	SEX (45) 1. <input type="checkbox"/> M 2. <input type="checkbox"/> F	ADDRESS PHONE
TYPE OF PREMISES (53-55)	DATE AND TIME REPORTED	REPORTED BY	ADDRESS			
DATE OF OCCURRENCE (56-61)	DAY CODE (62)	TIME (63-65)	FOUNDED (66) <input type="checkbox"/> Yes <input type="checkbox"/> No	STATUS (67) 1. <input type="checkbox"/> Active 2. <input type="checkbox"/> Inactive - not cleared 3. <input type="checkbox"/> Arrest - cleared 4. <input type="checkbox"/> Exceptionally cleared	UNIT	
STOLEN PROPERTY (68) 1. <input type="checkbox"/> Currency, Bonds, etc. 2. <input type="checkbox"/> T.V., Radio, Stereo 3. <input type="checkbox"/> Office Equipment	4. <input type="checkbox"/> Jewelry, Precious Metals 5. <input type="checkbox"/> Household Items (Furniture, Washers) 6. <input type="checkbox"/> Consumer Items (Liquor, Cigarettes, etc.)	7. <input type="checkbox"/> Autos A <input type="checkbox"/> Furs 8. <input type="checkbox"/> Clothing B <input type="checkbox"/> Misc. 9. <input type="checkbox"/> Firearms C <input type="checkbox"/> Live	PROPERTY VALUE (69-73) \$	RECOVERED VALUE (74-78) \$	INSURED <input type="checkbox"/> Yes <input type="checkbox"/> No	OCCURRENCE (79) <input type="checkbox"/> Inside <input type="checkbox"/> Out

## PROBABLE CAUSE CONT., SEARCH WARRANT #36653

labels were counterfeit. Williams noted that the original ingredients identification on the label did not match that which appears on legitimate Blue Water labels. He noted an absence of manufacturer's numbers, as well as the illegitimacy of the haddock and cod stamps appearing on the labels.

On February 21, 1978, the assigned received written confirmation from the Gorton Group that it had not made any direct shipments to Soloff, Inc. Telephone conversation by the assigned with Gorton Representative, Frank Earle, confirmed that Gorton makes no haddock product under the Blue Water label.

On January 13, 1978, a letter was sent from Marilyn Kutler to Soloff concerning the City's position on Contract #8-06051. On October 18, 1977, a letter was received from Soloff, Inc. listing the American and Berks Sts. address on Soloff, Inc. stationary as the headquarters of Soloff, Inc.

Between March 7, 1977, and January 5, 1978, Soloff, Inc. bid on five separate occasions to provide the city with Blue Water brand products. On 3/7/77, 4/5/77, 5/6/77, 7/6/77, and 11/7/77, Soloff made bids to meet city contracts with Blue Water Brand Haddock.

On 1/5/78, Soloff, Inc. submitted a bid to be opened on 1/6/78 to furnish 700 lbs. of Blue Water or Vita Cod Fish Fillet. On 1/6/78, Soloff, Inc. won the bid to be delivered sometime during the month of February, 1978. Page one of the invitation and bid form #68-30L states, "one delivery per week to each institution and only in such quantities as requested by the personnel of that institution. Contractors to be given five days advance notice." All correspondence between Soloff, Inc. and the City of Philadelphia bear the above listed American and Berks street address.

Affiant \_\_\_\_\_ Date \_\_\_\_\_

J. \_\_\_\_\_ Date \_\_\_\_\_

PAGE THREE

INVESTIGATOR (Type and Sign Name)	SERGEANT	LIEUTENANT
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**END**