

What To Do When Law Enforcement Knocks On The Door Of Your Portfolio Company With A Search Warrant

VCExperts
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Most venture capitalists live in a world far removed from the world of law enforcement. Sure, many have read Tom Wolfe's "Bonfire of the Vanities," in which a Manhattan investment banker takes a wrong turn and ends up prosecuted for a hit-and-run. And the nightly news and Wall Street Journal often feature the occasional "perp walk" of some unfortunate executive. But most VC's likely think that they are unlikely to encounter the guys (and gals) with badges and guns anytime soon.

But think again. The latest fad in white collar law enforcement is deploying the tools typically associated with drugs and organized crime - notably search warrants and wiretaps - to investigate white collar crime, as was done in the "Galleon" and "expert network" insider trading cases, among others. Exploring all the ways in which these practices might affect the VC community is beyond the scope of this short article, so I'll focus on what is probably the most likely scenario: you serve on the Board of a portfolio company and get a panicked call from the CEO at 7:30 am saying that a bunch of people in windbreakers have shown up at the company with a search warrant. What to do next?

First and foremost, you should already know the name of a good white collar criminal defense lawyer, and have his or her phone number handy, including home and cellphone numbers. He or she may or may not be at the firm that does your corporate work, so don't count on calling your "usual" lawyer. Time is of the essence, and there is not enough time to get recommendations or to be introducing yourself, so have your white collar "emergency" lawyer lined up in advance.

Second, make sure your CEO or other company representative knows enough in that first phone call not to make stupid mistakes when s/he gets off the phone. Company officers at the scene should be polite, respectful and cooperative, but should ideally defer all questions of substance until they can reach the company's lawyer. (More on this below). The police officers and/or federal agents will form impressions right from the outset, so it's counterproductive to be hostile, passive-aggressive ("gee, I don't know where the key to that file cabinet is"), evasive, or rude. At the same time, the law enforcement people will have their ears tuned to *everything* that is said during the search, and it is usually a big mistake to talk about the merits of the case without counsel present. It is often a good idea to send non-essential employees home while the search is being conducted; suggest it to the agent in charge, and they will often say yes (easier for them to do their jobs unimpeded); if they say no, that's all the more reason to get the company's white collar

lawyer on the scene ASAP, because the agents will soon be trying to interrogate everyone in sight (see below).

Third, make sure whomever is at the scene does a few important preliminary things. Get a copy of the search warrant and send it ASAP to the criminal defense lawyer. Do not interfere with the search in any way, even if you think it is out-of-bounds; wait for your lawyer to review the warrant. If, however, you see the agents searching files or areas that contain attorney-client privileged materials, point that out to the agent in charge. Maintain sound document preservation practices, and don't destroy anything during or after the search. Find out the names and ask to see the credentials of the officers or agents who seem to be in charge; ideally get their business cards. (The federal agents usually have them.) Try to find out the name and phone number of the prosecutor handling the case. Ask for an inventory of what the agents have seized.

Finally, once your white collar lawyer enters the fray, do what they say. They will have a variety of important decisions to make quickly, and will need your attention and cooperation. One tricky issue that may arise is if the law enforcement agents are aggressively trying to question company employees at the scene of the search. A blanket directive that employees cannot talk to law enforcement will anger the agents at a minimum and can even be viewed as obstruction of justice. On the other hand, your white collar lawyer may be able to communicate to employees an accurate statement of their rights and responsibilities: for example, depending on the circumstances, that they are under no obligation to talk to law enforcement or that the company would prefer to have counsel present at any interview they give.

With any luck, you'll never get that early morning phone call. But if you keep these tips in mind, you can help your portfolio company navigate the search warrant process smoothly, or, at a minimum, without making matters worse.

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