



Peter H. Wolf
Guest columnist

Search warrants for dummies

At 10 a.m. Aug. 8, about 30 FBI agents showed up at former President Trump's Florida residence, Mar-a-Lago, to execute a search warrant. They searched several rooms, including Trump's safe, and took away many boxes of documents. There was no guns-displayed, battering-ram raid.

What does a search warrant consist of? Who authorizes it? How is one obtained? Who obtains it? How is it executed? What happens afterward? Let's answer these questions.

The Constitution is a good place to start. The language of the Fourth Amendment doesn't answer everything (there have been decades of court interpretation of it), but the latter half about warrants is instructive:

"The right of the people to be secure in their person, Houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants 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."

As a trial judge in Washington, D.C., I authorized thousands of search warrants. I often served in the "Judge in Chambers" assignment where a judge is available for just such non-courtroom activities. That answers who can authorize a search or arrest: a judge, justice of the peace or magistrate, depending on state or federal law. But the police and/or prosecutor must apply to the judge to do so.

The application starts with a draft affidavit. It's a written statement of facts that must supply the probable cause for the search or arrest. Probable cause is not terribly specific, but "reasonable grounds" is synonymous.

A police officer/detective, or agent most familiar with the investigation, will normally formulate the affidavit and will usually confer with a prosecutor during preparation. Hearsay content is allowed.

The preparer then takes the draft to the appropriate judge, who reads the affidavit, may have questions about it, and may change or add clarification to the draft. Once satisfied as to all elements of probable cause, the judge then swears the officer to the truth of the affidavit and both sign and date it, including initialing any inserted changes.

There is a separate fill-in-the-blanks form that is the search warrant itself. Also prepared ahead of time, it is signed only by the judge and describes with precision where the search is to occur and the property that may be seized. It also commands the chief of police or other appropriate official, or their designates, to execute the warrant usually within 14 days, leave an inventory of what was taken with someone at the premises and file a sworn return of what was seized before a judge within 10 days of the search. (Judges want to know which searches do, and which don't, yield usable evidence.)

The officer then takes the warrant and its supporting affidavit to the court's non-public warrant office, where they are filed and impressed with the court's raised official seal.

This is all appropriately secret. We do not want evidence destroyed, flushed down the toilet or moved. Any irregularities can be litigated later. For example, the whole seizure can be invalidated if someone lied in the affidavit.

Police or FBI decide how and when to execute the warrant, often before people wake up in the morning. They must knock and announce their purpose. No-

knock or nighttime searches can be authorized, but they are dangerous and increasingly frowned upon. Police can enter the premises by force within a reasonable time after their knock, lessened if they hear or suspect evidence is being destroyed. People inside the premises can be searched for weapons and restrained, and the search can be as intrusive as there are possible hiding places — under the mattress is a favorite.

The occupants do not have to be given the affidavit in support of the search warrant. Evidence of another crime in plain sight, or from individual searches for weapons, can also be seized. People can immediately be arrested for illegal possession of any evidence found, including that searched for in the first place.

On the other hand, there is no requirement of arrest or prosecution for any evidence seized. It is within the discretion of law enforcement, especially for a former president of the United States. We shall see ...

Peter H. Wolf is a retired District of Columbia trial judge who lives in Winston-Salem.