Table of Contents

Volume 1

CHAPTER 1. RESEARCHING SEARCH WARRANT REQUIREMENTS

§ 1:1 How to use this book
§ 1:2 When warrants?
§ 1:3 Probable cause
§ 1:4 Obtaining warrants
§ 1:5 Particularity
§ 1:6 Execution: When? How?
§ 1:7 Extent of search
§ 1:8 Special warrant problems
§ 1:9 Seizure of evidence
§ 1:10 Post-execution requirements
§ 1:11 Motions to suppress
§ 1:12 Specific jurisdictional requirements

CHAPTER 2. CONSTITUTIONAL SIGNIFICANCE OF SEARCH WARRANTS

§ 2:1 General rule
§ 2:2 Importance of common law origins of search warrants
§ 2:3 Significance of inclusion of the warrant clause in the Fourth Amendment
§ 2:4 Checklist for prosecutors
§ 2:5 Checklist for defense counsel

CHAPTER 3. WHEN SEARCH WARRANTS ARE REQUIRED

§ 3:1 General rule
§ 3:2 Warrant preference
§ 3:3 Warrant requirement
§ 3:4 Exception: Exigency
§ 3:5 Exception: Search incident to arrest
§ 3:6 Exception: Consent
§ 3:7 Exception: Car searches
§ 3:8 Exception: Plain view doctrine
§ 3:9 Exception: Entry to arrest with arrest warrant
§ 3:10 Exception: Administrative searches
§ 3:11 Exception: Public employee office searches
§ 3:12 Exception: Search of probationer’s home
§ 3:13 Exception: Drug tests
§ 3:14 Exception: Inventory searches
§ 3:15 Exception: Border searches
§ 3:16 Exception: Investigative stops
§ 3:17 Exception: Plain feel searches
§ 3:18 Checklist for prosecutors
§ 3:19 Checklist for defense counsel

CHAPTER 4. PROBABLE CAUSE
§ 4:1 General rule
§ 4:2 Constitutional requirement
§ 4:3 Meaning of probability
§ 4:4 Probable cause based on informant information
§ 4:5 Confidential informants
§ 4:6 Prospective probable cause: Anticipatory warrants
§ 4:7 Challenging probable cause affidavits
§ 4:8 Review of probable cause determinations
§ 4:9 Checklist for prosecutors
§ 4:10 Checklist for defense counsel

CHAPTER 5. STALENESS OF PROBABLE CAUSE INFORMATION
§ 5:1 General rule
§ 5:2 Factors establishing staleness
§ 5:3 Staleness of “controlled buy” information
§ 5:4 Undated probable cause information
§ 5:5 Checklist for prosecutors
§ 5:6 Checklist for defense counsel

CHAPTER 6. APPLICATION PROCEDURE:
OATHS AND AFFIDAVITS
§ 6:1 General rule
§ 6:2 Who may apply for a search warrant?
§ 6:3 Constitutional oath requirement
§ 6:4 Form of oath or affirmation
§ 6:5 Written affidavits
§ 6:6 Multiple or multi-purpose affidavits and accompanying documents
§ 6:7 Oral statements
§ 6:8 Affidavits in fictitious names
§ 6:9 Checklist for prosecutors
CHAPTER 7. ISSUANCE BY MAGISTRATE

§ 7:1 General rule
§ 7:2 Who may issue a search warrant?
§ 7:3 Specific claims of magistrate's partiality
§ 7:4 “Rubber stamp” magistrates
§ 7:5 Significance of prior warrant, prior indictment, or prior seizure
§ 7:6 Significance of prior refusal to issue warrant
§ 7:7 Significance of prior search of same premises
§ 7:8 Failure of magistrate to sign or seal warrant
§ 7:9 When may warrant be issued?
§ 7:10 Checklist for prosecutors
§ 7:11 Checklist for defense counsel

CHAPTER 8. PARTICULARITY REQUIREMENT: PLACES TO BE SEARCHED

§ 8:1 General rule
§ 8:2 Constitutional requirement
§ 8:3 Description of premises
§ 8:4 Description of vehicles
§ 8:5 Description of persons
§ 8:6 Description: “All persons on the premises”
§ 8:7 Description of multiple places in one search warrant
§ 8:8 Checklist for prosecutors
§ 8:9 Checklist for defense counsel

CHAPTER 9. PARTICULARITY REQUIREMENT: THINGS TO BE SEIZED

§ 9:1 General rule
§ 9:2 Constitutional requirement
§ 9:3 Description of contraband
§ 9:4 Description of fruits of crime
§ 9:5 Description of nondocumentary evidence
§ 9:6 Description of documentary evidence or data
§ 9:7 Error in description
§ 9:8 Severance of erroneously described items
§ 9:9 Checklist for prosecutors
§ 9:10 Checklist for defense counsel

CHAPTER 10. TIMELINESS OF EXECUTION

§ 10:1 General rule
§ 10:2 Time period for execution of warrant
§ 10:3 Delay in execution of warrant
§ 10:4 Search in absence of warrant
§ 10:5 Searches on Sunday
§ 10:6 Unreasonable timing of execution
§ 10:7 Checklist for prosecutors
§ 10:8 Checklist for defense counsel

CHAPTER 11. NIGHTTIME SEARCHES
§ 11:1 General rule
§ 11:2 Nighttime search restrictions
§ 11:3 Nighttime defined and applied
§ 11:4 Showing required for authorized nighttime search
§ 11:5 Constitutional status of nighttime search violations
§ 11:6 Checklist for prosecutors
§ 11:7 Checklist for defense counsel

CHAPTER 12. ENTRY TO EXECUTE WARRANT
§ 12:1 General rule
§ 12:2 Who may execute a search warrant?
§ 12:3 Knock and announce requirement
§ 12:4 Sufficiency of announcement
§ 12:5 Forcible entries
§ 12:6 Entry by trick
§ 12:7 Entry where potential danger to officers or destruction of evidence
§ 12:8 Entry where notice a “useless gesture”
§ 12:9 “No-Knock” search warrants
§ 12:10 Entry when no one home
§ 12:11 Covert entry: “Sneak and Peek” warrants
§ 12:12 Checklist for prosecutors
§ 12:13 Checklist for defense counsel

CHAPTER 13. PERSONS ON OR NEAR SEARCH PREMISES: DETENTION, SEARCH, AND ARREST
§ 13:1 General rule
§ 13:2 Detention of persons on or near search premises
§ 13:3 Searches of persons on or near search premises
§ 13:4 Arrest of persons on or near search premises
§ 13:5 Checklist for prosecutors
§ 13:6 Checklist for defense counsel
CHAPTER 14. EXTENT OF SEARCH: SCOPE
§ 14:1 General rule
§ 14:2 Scope limits generally
§ 14:3 Use of general search warrant terms such as "premises"
§ 14:4 Search of vehicles on described premises
§ 14:5 Search of vehicles not on described premises
§ 14:6 Neighboring areas
§ 14:7 Neighboring areas that are or appear to be part of a search area
§ 14:8 Access to search areas
§ 14:9 Checklist for prosecutors
§ 14:10 Checklist for defense counsel

CHAPTER 15. EXTENT OF SEARCH: INTENSITY
§ 15:1 General rule
§ 15:2 Intensity limits generally
§ 15:3 Search after objects located
§ 15:4 Length of search
§ 15:5 Damage or destruction of property
§ 15:6 Searches of third parties on search premises
§ 15:7 Searches of personal property of third parties on search premises
§ 15:8 Searches of personal property not known to be owned by third parties on search premises
§ 15:9 Unprotected personal property on search premises
§ 15:10 Searching or answering telephone
§ 15:11 Videotaping or photographing search premises or search targets
§ 15:12 Search of computer or other data files
§ 15:13 Warrant for GPS tracking
§ 15:14 Checklist for prosecutors
§ 15:15 Checklist for defense counsel

CHAPTER 16. THIRD PARTY WARRANTS: NEWSROOM AND LAW OFFICE SEARCHES
§ 16:1 General rule
§ 16:2 Third party search warrants constitutional
§ 16:3 Newsroom searches
§ 16:4 Law office searches
§ 16:5 Checklist for prosecutors
§ 16:6 Checklist for defense counsel
CHAPTER 17. SEARCH WARRANTS FOR MATERIAL PROTECTED BY THE FIRST AMENDMENT

§ 17:1 General rule
§ 17:2 First amendment warrant requirement
§ 17:3 Seizure of obscene material
§ 17:4 Newsroom searches and the first amendment
§ 17:5 Indicia warrants
§ 17:6 Checklist for prosecutors
§ 17:7 Checklist for defense counsel

CHAPTER 18. SEIZURE OF EVIDENCE

§ 18:1 General rule
§ 18:2 When evidence may be seized
§ 18:3 What evidence may be seized
§ 18:4 Seizure of evidence and the Fifth Amendment
§ 18:5 Checklist for prosecutors
§ 18:6 Checklist for defense counsel

CHAPTER 19. RECEIPT, RETURN, AND INVENTORY

§ 19:1 General rule
§ 19:2 Notice and receipt requirements
§ 19:3 Return and inventory requirements
§ 19:4 Retention of and public access to records
§ 19:5 Nonconstitutional status of most violations
§ 19:6 Return of seized property
§ 19:7 Checklist for prosecutors
§ 19:8 Checklist for defense counsel

CHAPTER 20. MOTIONS TO SUPPRESS: THE EXCLUSIONARY RULE

§ 20:1 General rule
§ 20:2 Application of the exclusionary rule
§ 20:3 Scope of the exclusionary rule
§ 20:4 Exclusion of “fruits”. The derivative evidence rule
§ 20:5 Reasonable good faith exception to the exclusionary rule
§ 20:6 Checklist for prosecutors
§ 20:7 Checklist for defense counsel
Table of Contents

Volume 2

APPENDICES

APPENDIX 1. United States-Specific Jurisdictional Requirements
APPENDIX 2. State-Specific Jurisdictional Requirements
Table of Cases
Index