



NACDL Fourth Amendment Center

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Objectives

- SCOTUS: Digital is Different, *Jones/Riley/Carpenter*
- How Device and Account Searches Work
- Challenges Breadth, Particularity



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Another Olmstead-Katz Moment

Olmstead v. United States
277 U.S. 438 (1928)



Katz v. United States
389 U.S. 347 (1967)



Digital is Different

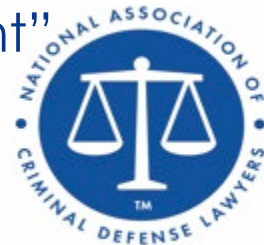
- ***United States v. Jones***, 132 S.Ct. 945 (2012)
- ***Riley v. California***, 134 S.Ct. 2473 (2014)
- ***Carpenter v. United States***, 138 S.Ct. 2206 (2018)



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But...

- “nothing is left to the discretion of the officer executing the warrant,” has become more of an aspiration than a rule.
- “[c]omputer search warrants are the closest things to general warrants we have confronted in this history of the Republic.”
- There is a “serious risk that every warrant for electronic information will become, in effect, a general warrant, rendering the Fourth Amendment irrelevant”



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Their Narrative

- Incriminating evidence can be manipulated, concealed, and disguised.
- Incriminating data is intermingled with private non-criminal data. AKA the “needle in the haystack argument”
- Data is fragile and extractions are difficult.
- 1110000011010100100010110
- Conclusion: Digital searches are complicated so don't apply the 4th Amendment in such a restrictive fashion.



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Execution

Device & Accounts



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Device Searches

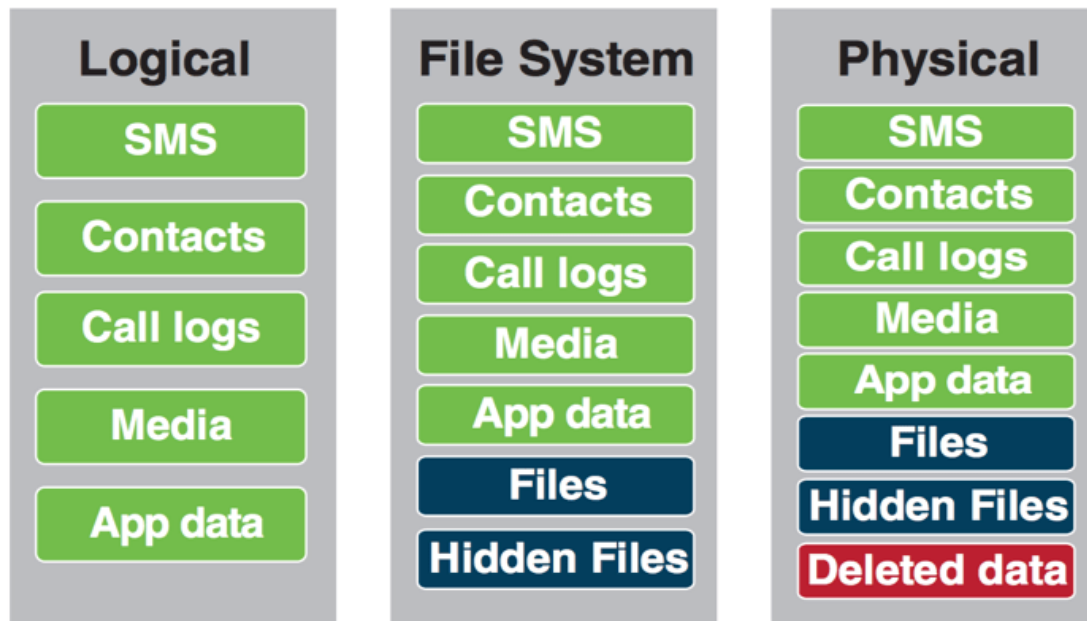
- Multiple steps
 - Extraction- opportunities to limit data extracted
 - Search – opportunities to limit what is viewed.
 - Creation of reports – or segregating of responsive from non-responsive data.



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Step 1 - Extraction/Imaging

- There are different types of extractions or images
- Cellebrite: physical, advanced file system, file system, advanced logical, logical.



Step 1 - Extraction/Imaging

YOUR DEVICE'S INFO



Samsung GSM SM-G970U Galaxy S10e
USB cable 170 or Original Cable

Device properties

Model: Samsung GSM SM-G970U G...	Security patch: 2021-02-01
Device name: SM-G970U1	IMEI: 352808102171501 352808102171501
OS: Android 11	Apps: 470
Chipset: msm9815	
Rooted: #No#	

Insights from installed apps:

You can select specific apps to extract:

Search: No Categories DB was found 0 apps selected ☐ All

App Name (470)	Physical Analyzer	Last used	Category
<input type="checkbox"/> YouTube	Yes	Unknown	
<input type="checkbox"/> Google	Yes	Unknown	
<input type="checkbox"/> Viber	Yes	Unknown	
<input type="checkbox"/> WhatsApp Messenger	Yes	3/16/2021	
<input type="checkbox"/> OneDrive - cloud storage	Yes	Unknown	
<input type="checkbox"/> Gmail	Yes	Unknown	
<input type="checkbox"/> com.google.android.apps.tachyon	Yes	3/9/2021	
<input type="checkbox"/> Signal Private Messenger	Yes	3/19/2021	
<input type="checkbox"/> Twitter	Yes	3/19/2021	
<input type="checkbox"/> Google Drive	Yes	3/9/2021	
<input type="checkbox"/> Maps	Yes	Unknown	
<input type="checkbox"/> TextNow	Yes	Unknown	
<input type="checkbox"/> Chrome Browser - Google	Yes	Unknown	
<input type="checkbox"/> Google Photos	Yes	3/19/2021	

Total used 8 GB (of 128 GB) - 120 GB free

ABORT **SELECTIVE FILE SYSTEM** **FULL**

Step 1.5 – Extraction/Reports

The screenshot displays the UFED Cloud software interface with the 'Generate Report' dialog box open for an Apple iPhone X (A1901). The interface includes a top menu bar, a left sidebar with 'Analyzed Data' categories, and a main workspace.

Generate Report Dialog - Report Dataset - Apple iPhone X (A1901)

- General:** Report Dataset is set to 'Apple iPhone...'. The 'Only events between these dates' section has 'From' and 'To' fields. The 'Include items without a timestamp' checkbox is unchecked.
- Data types:** A list of data types with checkboxes for selection. The 'Select/Deselect All' button is active. The 'Enter text to filter...' search bar is present.
- Preferences:** A section for report preferences with checkboxes for various options.

Activity Sensor Data Panel:

From: 2/10/2021 6:00:00 PM(UTC+0)
To: 2/10/2021 7:00:00 PM(UTC+0)
Device name:
Total samples count: 2
Max heartrate:
Distance Traveled: 5.6
Flights Climbed:
Max speed:
Name:
Extraction: Advanced Logical
Manually decoded: False
Source file: [iPhone/mobile/Library/Health/healthdb_secure.sqlite : 0xA8832 \(Table: objects, samples: Size: 2031616 bytes\)](#)

Graph:

Data type: Total

Legend: Steps (red dot), Distance Traveled (orange dot)

The graph shows a single data point for Steps at 2/10/2021 6:39:49 PM.

Bottom Status Bar:

2/11/2021 5:07:34 PM(UTC+0) [Created] IMG_0009.HEIC

Step 2 Search/Analysis

The screenshot displays a data analysis tool interface with a dark sidebar on the left and a main content area on the right. The sidebar contains a search bar and a list of analyzed data categories: Calls (16), Contacts (2822) (301), Location Related (969), Media (8532), Messages (1117), Chats (1117), Social Media (46550), Facebook Takeout (46550), User Accounts & Details (1), and User Accounts (1). Below these are data files: Documents (3), Text (3), and Uncategorized (1236).

The main content area features a top navigation bar with tabs for 'Extraction Summary (1)', 'Heather Comrey Mahalik (46...', 'Device Locations (969)', and 'Timeline (72094)'. A search bar is located in the top right corner. Below the tabs is a timeline view showing data from 2009 to 2020. A table of results is displayed below the timeline, with columns for 'Created', 'Last Modified', 'Type', 'Related event', 'Source', and 'Participants'. A context menu is open over the 'Type' column, showing options like 'Select All', 'Check In', 'Like', 'Post', 'Reaction', 'Recommendation', 'Share', and 'Update'. The 'Check In' option is selected.

On the right side of the main content area, there is a 'Social Media' section with a 'Translate' button and a 'Go to' button. Below this is a 'Details' section for a specific item, showing source information, account details, and a list of participants.

Red circles highlight the search bar in the top right corner and the 'Translate' button in the 'Social Media' section.

Step 2 – Search/Analysis

Search tags

[Clear All](#) [Manage tags](#)

Case tags

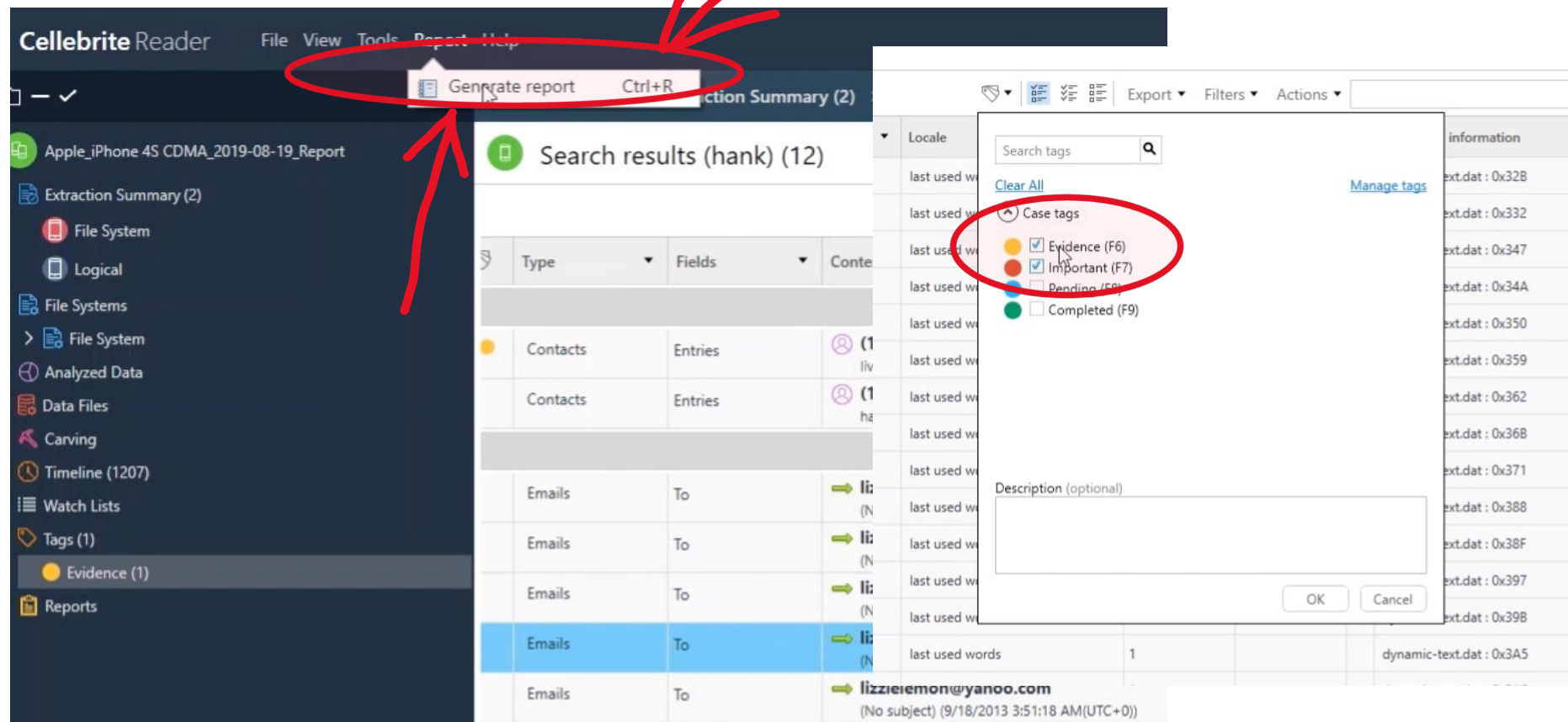
- ☒ Evidence (F6)
- ☒ Important (F7)
- ☐ Pending (F8)
- ☐ Completed (F9)

Description (optional)

OK Cancel

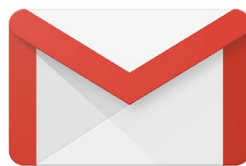
Locale	last used words	information
		ext.dat : 0x32B
		ext.dat : 0x332
		ext.dat : 0x347
		ext.dat : 0x34A
		ext.dat : 0x350
		ext.dat : 0x359
		ext.dat : 0x362
		ext.dat : 0x368
		ext.dat : 0x371
		ext.dat : 0x388
		ext.dat : 0x38F
		ext.dat : 0x397
		ext.dat : 0x398
	1	dynamic-text.dat : 0x3A5

Step 3- Segregation



Account Searches

- Multiple steps
- Step 1- search and segregation by ISP
- Step 2- search or analysis of the data by the government
- Step 3- creation of reports or segregation



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Device Warrants & Account Warrants



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Probable Cause



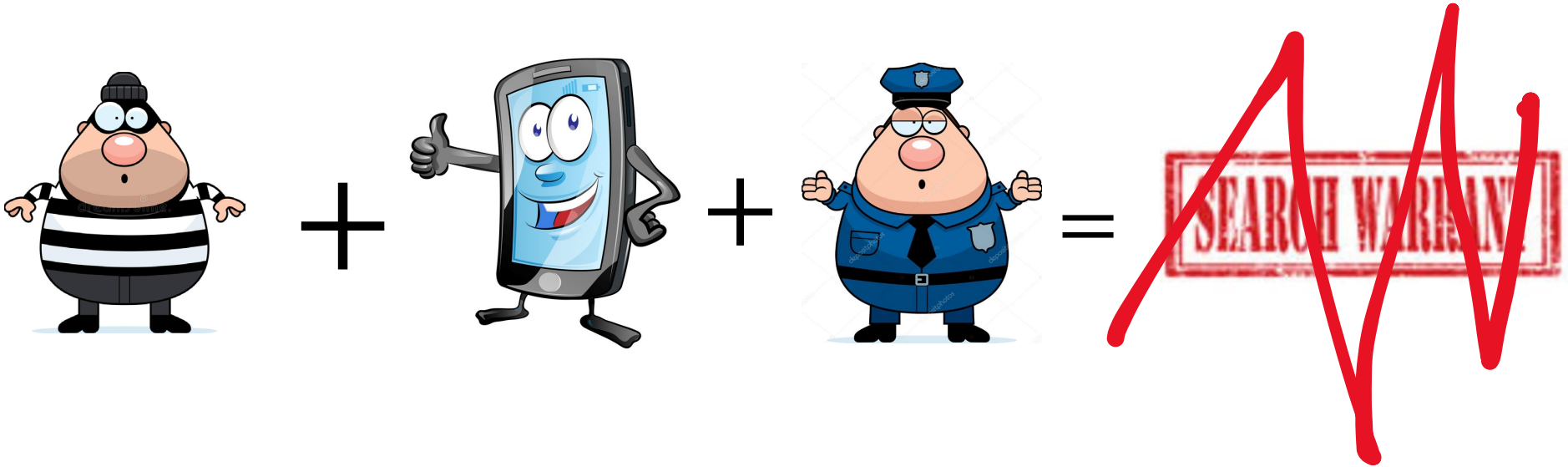
+



=

~~SEARCH WARRANT~~

Probable Cause



Particularity & Breadth

- **Particularity** – warrant must clearly state what evidence is sought.
- **Breadth** – scope of the warrant must be limited to that evidence for which the government had established probable cause.



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Probable Cause and Breadth

- Interrelated issues
- Two PC requirements
 - PC crime committed
 - PC that the evidence exists in the place to be searched
- Breadth= PC for each item to be seized or place to be searched



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Overbreadth Example: Device

- Affidavit states
 - D seen on video committing a shooting.
 - Informant says he heard D calling others about the shooting and saw him sending text messages about how he committed the shooting and how he would dispose of the firearm.
 - Reliability is established
 - D found with phone on him.

IN THE NAME OF THE PEOPLE OF THE STATE
OF NEW YORK

IN THE MATTER OF AN THE APPLICATION FOR
A SEARCH WARRANT TO SEARCH THE
CONTENTS OF ONE [REDACTED] CELLULAR
TELEPHONE SEIZED DURING THE COURSE OF
THE ARREST OF AN INDIVIDUAL IDENTIFIED
AS [REDACTED]
[REDACTED], BRONX COUNTY,
NEW YORK

SEARCH WARRANT

-----X
TO ANY POLICE OFFICER OF THE POLICE DEPARTMENT OF THE CITY OF
NEW YORK OR THE BRONX COUNTY DISTRICT ATTORNEY'S OFFICE
DETECTIVE INVESTIGATOR SQUAD

YOU ARE HEREBY AUTHORIZED AND DIRECTED to search the [REDACTED] cellular
telephone [REDACTED] and any memory or SIM cards contained therein, that are currently in the
possession of the New York City Police Department (hereinafter "Target Cellular Telephone"), and
to acquire the following: any and all evidence on the Target Cellular Telephone, from [REDACTED]
to present, tending to evince or demonstrate that certain persons participated in the commission of an
attempted Murder in the Second Degree within Bronx County, New York, and disposal of the
firearm, to wit:

- a. the shooting of [REDACTED] at [REDACTED]
Avenue on [REDACTED], and/or possession or disposal of a firearm, and any
participants therein;
- b. communications about or references to disposing a firearm;
- c. browser and search histories;
- d. communications with or referencing the firearm used in the shooting;
- e. physical presence in/around [REDACTED] Avenue on [REDACTED]
and/or

IN THE NAME OF THE PEOPLE OF THE STATE
OF NEW YORK

IN THE MATTER OF AN THE APPLICATION FOR
A SEARCH WARRANT TO SEARCH THE
CONTENTS OF ONE [REDACTED] CELLULAR
TELEPHONE SEIZED DURING THE COURSE OF
THE ARREST OF AN INDIVIDUAL IDENTIFIED
AS [REDACTED]

SEARCH WARRANT

[REDACTED], BRONX COUNTY;

- b. communications about or references to disposing a firearm;

DETECTIVE INVESTIGATOR SQUAD

- d. communications with or referencing the firearm used in the shooting;

possession of the New York City Police Department (Department) Target Cellular Telephone, from
to acquire the following: any and all evidence on the Target Cellular Telephone, from [REDACTED]
to present, tending to evince or demonstrate that certain persons participated in the commission of an
attempted Murder in the Second Degree within Bronx County, New York, and disposal of the

- c. browser and search histories;

participants therein;

- b. communications about or references to disposing a firearm;
c. browser and search histories;
d. communications with or referencing the firearm used in the shooting;
e. physical presence in/around [REDACTED] Avenue on [REDACTED]
and/or

Overbreadth Example: Account

Case 3:21-mj-01428-AHG Document 1 Filed 04/16/21 PageID.1 Page 1 of 17
AO 106A, (08/18) Application for a Warrant by Telephone or Other Reliable Electronic Means

UNITED STATES DISTRICT COURT
for the
Southern District of California

In the Matter of the Search of
*(Briefly describe the property to be searched
or identify the person by name and address)*
Google account: vvmexi2@gmail.com

Case No. '21 MJ01428

APPLICATION FOR A WARRANT BY TELEPHONE OR OTHER RELIABLE ELECTRONIC MEANS

I, a federal law enforcement officer or an attorney for the government, request a search warrant and state under penalty of perjury that I have reason to believe that on the following person or property *(identify the person or describe the property to be searched and give its location)*:

See Attachment A, incorporated herein by reference.

located in the Northern District of California, there is now concealed *(identify the person or describe the property to be seized)*:

See Attachment B, incorporated herein by reference.

The basis for the search under Fed. R. Crim. P. 41(c) is *(check one or more)*:

☒ evidence of a crime;
☒ contraband, fruits of crime, or other items illegally possessed;
☒ property designed for use, intended for use, or used in committing a crime;
☐ a person to be arrested or a person who is unlawfully restrained.

The search is related to a violation of:

Code Section	Offense Description
18 USC 2252 & 2252A	Distribution, Transportation, Receipt, Possession of Child Pornography

The application is based on these facts:
See Attached Affidavit of Special Agent, incorporated herein by reference.

☒ Continued on the attached sheet.
☐ Delayed notice of _____ days *(give exact ending date if more than 30 days)* is requested under 18 U.S.C. § 3103a, the basis of which is set forth on the attached sheet.

Allison Kehlmann
Applicant's signature
Special Agent Allison Kehlmann, NCIS
Printed name and title

Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1 by
_____ telephone *(specify reliable electronic means)*.

Date: April 16, 2021

Allison H. Goddard
Judge's signature
Hon. Allison H. Goddard, United States Magistrate Judge
Printed name and title

City and state: San Diego, California

UNITED STATES DISTRICT COURT

for the
Southern District of California

In the Matter of the Search of
(Briefly describe the property to be searched
or identify the person by name and address)

Google account: wymexi2@gmail.com

Case No. '21 MJ01428

APPLICATION FOR A WARRANT BY TELEPHONE OR OTHER RELIABLE ELECTRONIC MEANS

I, a federal law enforcement officer or an attorney for the government, request a search warrant and state under penalty of perjury that I have reason to believe that on the following person or property (identify the person or describe the property to be searched and give its location):

See Attachment A, incorporated herein by reference.

located in the Northern District of California, there is now concealed (identify the person or describe the property to be seized):

See Attachment B, incorporated herein by reference.

The basis for the search under Fed. R. Crim. P. 41(c) is (check one or more):

- ☒ evidence of a crime;
☒ contraband, fruits of crime, or other items illegally possessed;
☒ property designed for use, intended for use, or used in committing a crime;
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Applicant's signature

Special Agent Allison Kehlmann, NCIS

Printed name and title

Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1 by
_____ telephone (specify reliable electronic means).

Date: April 16, 2021


Judge's signature

City and state: San Diego, California

Hon. Allison H. Goddard, United States Magistrate Judge
Printed name and title

ATTACHMENT B

I. Service of Warrant

The officer executing the warrant shall permit Google, LLC as custodian of the computer files described in Section II below, to locate the files and copy them onto removable electronic storage media and deliver the same to the officer. Notwithstanding the provisions of 18 U.S.C. § 2252A or similar statute or code, Google is authorized to disclose responsive data, if any, by sending it to the law enforcement officer using the US Postal Service or another courier service, or by delivering encrypted files through Google's Law Enforcement Request System.

II. Items to be provided by the ISP

All subscriber and/or user information, all electronic mail, images, text messages, histories, buddy lists, profiles, address books, chat logs, methods of payment, detailed billing records, Internet Protocol (IP) logs, deleted data, backup data, and transactional data, in addition to account content associated with the Google account, including Google Drive, Google Photos, and any other files or records associated with the following account and screen name(s):

wymexi2@gmail.com

III. The search of the data supplied by Google pursuant to this warrant will be conducted as provided in the "Procedures For Electronically Stored Information" of the affidavit submitted in support of this search warrant and will be limited to the period of March 1, 2019, to the present, and to the seizure of:

a. Any and all photographs, videos, visual depictions or other content related to the sexual exploitation of minors, including but not limited to communications and other content evidencing the actual and attempted sexual exploitation of minors, the distribution, receipt, and possession of child pornography as defined by 18 U.S.C. §2256, and the identification of any individuals involved in the same.

UNITED STATES DISTRICT COURT

In the Matter of _____
(Briefly describe the person or entity being searched, or identify the person or entity if the person or entity is a corporation, partnership, or other legal entity.)
Google account

APPLICATION FOR A WARRANT

I, a federal law enforcement officer, declare under penalty of perjury that I believe the property to be searched and the person or persons to be searched for are located in the _____.

See Attachment A, in which I have described the property to be searched and the person or persons to be searched for.

See Attachment B, in which I have described the property to be searched and the person or persons to be searched for.

The basis for the search under Fed. R. Crim. P. 41(c) is (check one or more):

- ☒ evidence of a crime;
☒ contraband, fruits of crime, or other items illegally possessed;
☒ property of another person;
☐ a person.

The search is

Code Section
18 USC 2252 &

The application is made by
See Attached A

☒ Continue
☐ Delayed
18 U.S.C.

Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1 by _____
telephone _____ (specify reliable electronic means).

Date: April 16, 2021

City and state: San Diego, California

Allison H. Goddard

Judge's signature

Hon. Allison H. Goddard, United States Magistrate Judge
Printed name and title

a. Any and all photographs, videos, visual depictions or other content related to the sexual exploitation of minors, including but not limited to communications and other content evidencing the actual and attempted sexual exploitation of minors, the distribution, receipt, and possession of child pornography as defined by 18 U.S.C. §2256, and the identification of any individuals involved in the same.

c. Electronic mail and attachments that provide context to any electronic mail reflecting the criminal activity described in this warrant including any electronic mail sent or received in temporal proximity to any relevant electronic mail and any electronic mail that identifies any users of the subject account;

12 messages, histories, buddy lists, profiles, address books, chat logs, methods of
13 payment, detailed billing records, Internet Protocol (IP) logs, deleted data, backup
14 data and transactional data in addition to account content associated with the

25 sexual exploitation of minors, the distribution, receipt, and possession of child
26 pornography as defined by 18 U.S.C. §2256, and the identification of any
27 individuals involved in the same.

UNITED STATES DISTRICT COURT

for the
Southern District of California

In the Matter of the Search of
(Briefly describe the property to be searched
or identify the person by name and address)

Google account: vymexi2@gmail.com

Case No. '21 MJ01428

APPLICATION FOR A WARRANT BY TELEPHONE OR OTHER RELIABLE ELECTRONIC MEANS

ATTACHMENT B

I. Service of Warrant

The officer executing the warrant shall permit Google, LLC as custodian of the computer files described in Section II below, to locate the files and copy them onto removable electronic storage media and deliver the same to the officer. Notwithstanding the provisions of 18 U.S.C. § 2252A or similar statute or code, Google is authorized to disclose responsive data, if any, by sending it to the law

II. Items to be provided by the ISP

All subscriber and/or user information, all electronic mail, images, text messages, histories, buddy lists, profiles, address books, chat logs, methods of payment, detailed billing records, Internet Protocol (IP) logs, deleted data, backup data, and transactional data, in addition to account content associated with the Google account, including Google Drive, Google Photos, and any other files or records associated with the following account and screen name(s):

Applicant's signature

Special Agent Allison Kehlmann, NCIS

Printed name and title

Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1 by
telephone (specify reliable electronic means).

Date: April 16, 2021

Allison H. Goddard

Judge's signature

City and state: San Diego, California

Hon. Allison H. Goddard, United States Magistrate Judge

Printed name and title

content related to the sexual exploitation of minors, including but not limited to communications and other content evidencing the actual and attempted sexual exploitation of minors, the distribution, receipt, and possession of child pornography as defined by 18 U.S.C. §2256, and the identification of any individuals involved in the same.

Particularity

- Particularity – name the data sought.
- Lack of particularity can also make a warrant overbroad.
- If you don't name the data to be seized then the government can seize everything (and they don't have pc for everything).



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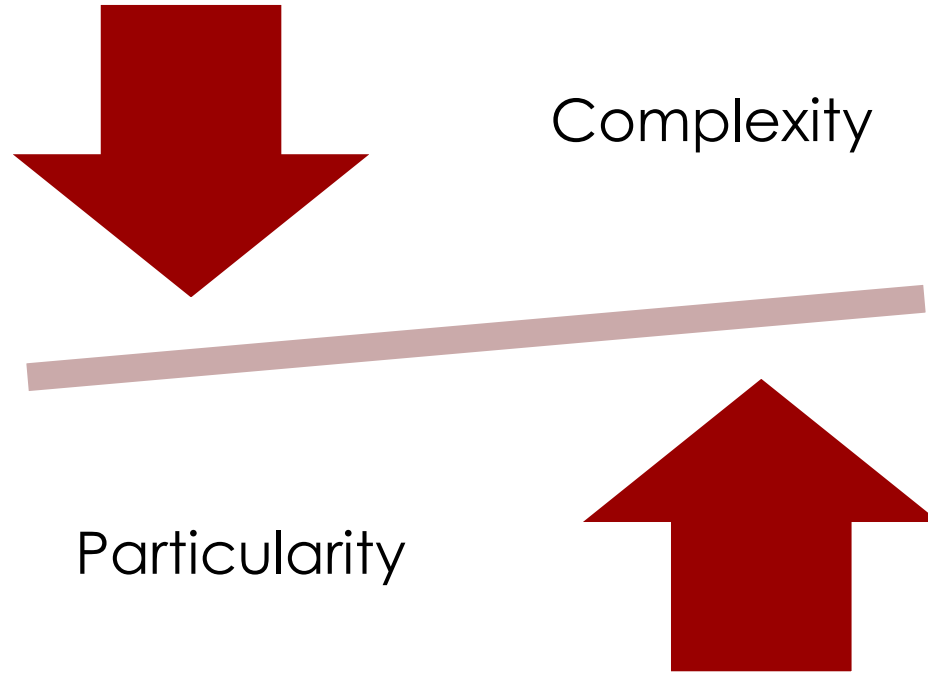
Particularity: Andresen & Evil Riley

- *Andresen v. Maryland*, 427 U.S. 463, 481 n. 10 & 11 (1976)
 - *Particularity has an inverse relationship with complexity*
- *United States v. Riley*, 906 F.2d 841, 845 (2d Cir. 1990) (aka the evil Riley)
 - “few people keep documents of their criminal transactions in a folder marked ‘drug records’”

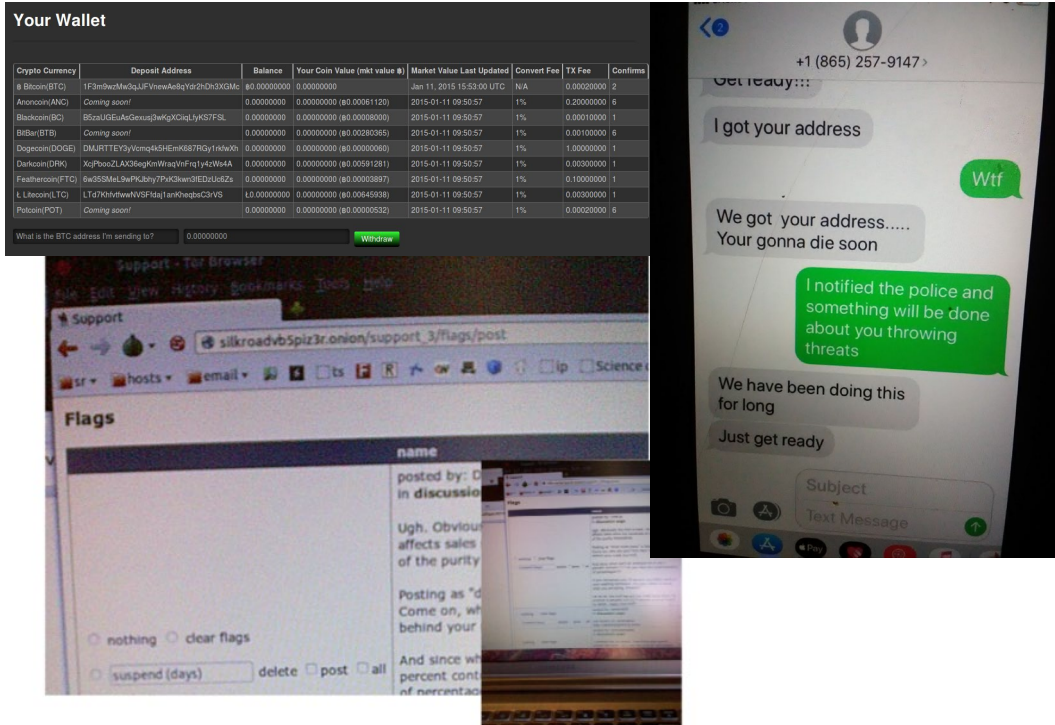


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Particularity: Reframing Andresen



Particularity: Reframing Andresen



Particularity: Addressing Riley

- Again, reframe Andresen.
- Although about particularity cases that cite it conflate the issues of particularity and execution.
- Execution is not the same thing as particularity.
- It doesn't matter that someone can hide or rename files.



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Addressing Riley = Franks

- The problems of hidden or altered files are overstated
- Even more overstated when it comes to phone and account searches
- If you see it in an affidavit for a broad warrant file a Franks motion!
- But don't get baited into arguing execution in the wrong places.



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Particularity Example: Device

IN THE NAME OF THE PEOPLE OF THE STATE
OF NEW YORK

IN THE MATTER OF AN THE APPLICATION FOR
A SEARCH WARRANT TO SEARCH THE
CONTENTS OF ONE [REDACTED] CELLULAR
TELEPHONE SEIZED DURING THE COURSE OF
THE ARREST OF AN INDIVIDUAL IDENTIFIED
AS [REDACTED]
[REDACTED] BRONX COUNTY,
NEW YORK

SEARCH WARRANT

-----X-----
TO ANY POLICE OFFICER OF THE POLICE DEPARTMENT OF THE CITY OF
NEW YORK OR THE BRONX COUNTY DISTRICT ATTORNEY'S OFFICE
DETECTIVE INVESTIGATOR SQUAD

YOU ARE HEREBY AUTHORIZED AND DIRECTED to search the [REDACTED] cellular
telephone [REDACTED] and any memory or SIM cards contained therein, that are currently in the
possession of the New York City Police Department (hereinafter "Target Cellular Telephone"), and
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to present, tending to evince or demonstrate that certain persons participated in the commission of an
attempted Murder in the Second Degree within Bronx County, New York, and disposal of the
firearm, to wit:

- a. the shooting of [REDACTED] at [REDACTED]
Avenue on [REDACTED] and/or possession or disposal of a firearm, and any
participants therein;
- b. communications about or references to disposing a firearm;
- c. browser and search histories;
- d. communications with or referencing the firearm used in the shooting;
- e. physical presence in/around [REDACTED] Avenue on [REDACTED]
and/or



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[REDACTED]

YOU ARE HEREBY AUTHORIZED AND DIRECTED to search the [REDACTED] cellular telephone [REDACTED] and any memory or SIM cards contained therein, that are currently in the possession of the New York City Police Department (hereinafter “Target Cellular Telephone”), and to acquire the following: any and all evidence on the Target Cellular Telephone, from [REDACTED] to present, tending to evince or demonstrate that certain persons participated in the commission of an attempted Murder in the Second Degree within Bronx County, New York, and disposal of the firearm, to wit:

- a. the shooting of [REDACTED] at [REDACTED] Avenue on [REDACTED], and/or possession or disposal of a firearm, and any participants therein;

[REDACTED]

all of which may be found in the Target Cellular Telephone’s electronic data content (either internal memory or inserted memory device or SIM card), including but not limited to: images, videos, emails, text messages, other electronic messaging and communications, voice messages, internet activity, including browser and search history, financial activity, contacts or address books, call history, cell site location information and GPS data, and identifying numbers for the device (such as telephone number, Mobile Identification Number [MIN/MSID], International Mobile Subscriber Identity [IMSI], Electronic Serial Number [ESN], Mobile Equipment Identifier [MEID], and International Mobile Station Equipment Identity [IMEI]).

[REDACTED]

Particularity & Overbreadth

- State v. Jandreau, 288 A.3d 371 (2022)
- The motion “included a section on what he asserted to be the overbreadth and lack of particularity of all four of the search warrants issued. However, the motion did not differentiate among the four warrants, did not quote or refer to any specific portion of any of the warrants, and did not link its boilerplate recitations of law and citations to cases to any specific portion of any of the four warrants or affidavits.”



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Our Narrative

- Particularity ≠ Execution
- Not actually complex so they need to be VERY particular.
- No needles or haystacks
- No hiding/renaming files
- Its NOT that COMPLICATED!



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NACDL Fourth Amendment Center

sthaxter@nacdl.org

4ac@nacdl.org