

## Can The State Really Do That? Extraordinary Search and Inspection Warrants

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### No-Knock Warrants

- Normally officers must knock and announce before entry
- But not if (1) dangerous, (2) futile, or (3) would lead to the destruction of evidence. *Richards v. Wisconsin*, 520 U.S. 385 (1997).
- G.S. 15A-251(2): an officer need not give notice if "[t]he officer has probable cause to believe that the giving of notice would endanger the life or safety of any person."



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### No-Knock Warrants (continued)

- It isn't clear that North Carolina judicial officials have authority to issue a no-knock warrant
- Judicial officials may wish to document the no-knock authority on the face of the warrant
- Quick knock entries deserve more attention

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## Anticipatory Warrants

- Used when police believe that there will be evidence of a crime present in the future (usually controlled delivery of drugs)
- See United States v. Grubbs, 547 U.S. 90 (2006)
- Requires PC that the “triggering condition” will take place and that once it does, evidence will be found
- Pro tip: the triggering condition must be described specifically, leaving no discretion to the officer



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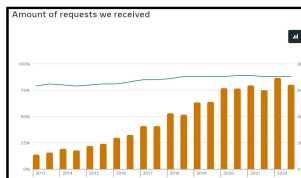
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## Warrants for Data Held By Electronic Service Providers



- Your cell phone company, ISP, social media platform, and search engine store a lot of data about you.
- For a long time, everyone, including Congress, thought that this information was not protected by the Fourth Amendment because it belonged to the companies, not you. Smith v. Maryland, 442 U.S. 735 (1979) (third-party doctrine).
- That's not so clear anymore. See Carpenter v. United States, 585 U.S. \_\_\_\_ (2018) (CSU); United States v. Warshaw, 631 F.3d 266 (6<sup>th</sup> Cir. 2010) (email).
- But back in 1986, Congress passed the Stored Communications Act to provide some protection to some of that information, and it has some weird rules. See 18 U.S.C. § 2701 et seq.

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## “Reverse Keyword” Warrants

- People v. Seymour, \_\_ P.3d \_\_, 2023 WL 6805809 (Colo. Oct. 16, 2023)
- Court assumes without deciding that a warrant for a “reverse keyword search” violated the Fourth Amendment, but applies the good faith exception to the exclusionary rule
- “[U]ntil today, no court had established that individuals have a constitutionally protected privacy interest in their Google search history.”

**Colorado court upholds Google keyword search warrant which led to arrests in fatal arson**

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## Warrants for GPS Tracking Devices

- A warrant is required to install and monitor a GPS tracker
  - See *United States v. Jones*, 565 U.S. 400 (2012)
- Lots of questions about out-of-jurisdiction jurisdiction monitoring, time limits, notifications, returns, and other matters

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## Warrants for Drone Surveillance

- G.S. 15A-300.1
- Generally, can't use drones to "[c]onduct surveillance of . . . [a] person or a dwelling occupied by a person," including the curtilage, or of "[p]rivate real property"
- But LEOs may do so with a warrant (or if the plain view or exigent circumstances doctrines apply)



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## Warrants for Bodily Intrusions

- What if police want to pump the stomach of someone suspected of swallowing baggies of drugs?
- What if the police want to remove a bullet lodged in a suspect's leg in order to tie the suspect to a shoot-out?

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### Warrants for Bodily Intrusions (continued)

- Winston v. Lee, 470 U.S. 753 (1985): just having PC is not enough
- Must weigh competing interests case by case:
  - How intrusive?
  - How risky?
  - How crucial is the evidence?
- If time permits, these applications should be presented to a judge, who may choose to hold an adversarial hearing
- Any significant intrusion should be performed by medically-trained personnel

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### Warrants for Biometric Unlocking

Some search warrant applications ask specifically for permission to do this

- Is that proper?
- What if they don't do that?

"The law in this area is emerging and entirely unsettled." In re Search Warrant No. 5165, 470 F.Supp.3d 715 (E.D. Ky. 2020).



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### Administrative Inspection Warrants

- What do we do when a government official needs to enter private property to conduct an inspection but the occupant won't consent?
- Camara v. Municipal Court of City and County of San Francisco, 387 U.S. 523 (1967) says: get an administrative inspection warrant



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### Administrative Inspection Warrants (cont'd)

- NC statute: G.S. 15-27.2
- Magistrates may issue AIWs
- Per Camara, two types of PC
  - Unlawful condition or activity
  - Part of a reasonable program of systematic inspection
- Execution is more limited than a search warrant

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### Administrative Inspection Warrants (cont'd)

"No facts discovered or evidence obtained in a search or inspection conducted under authority of a warrant issued under this section shall be competent as evidence in any civil, criminal or administrative action, nor considered in imposing any civil, criminal, or administrative sanction against any person, nor as a basis for further seeking to obtain any warrant, if the warrant is invalid or if what is discovered or obtained is not a condition, object, activity or circumstance which it was the legal purpose of the search or inspection to discover; but this shall not prevent any such facts or evidence to be so used when the warrant issued is not constitutionally required in those circumstances."

• G.S. 15-27.2(f)

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