July 19, 2012

To
The Honorable Chief Justice Myron Steele

Your Honor,

I have not as yet been officially notified of the "en banc" hearing scheduled in August, but have read of such in the News Journal.

I was not invited to the first hearing for oral arguments, and therefore concluded I will also be excluded from the 'en banc' one.

Enclosed I submit two documents which I hope might be read and discussed at the hearing. One "Defective warriant", the other "Computer search", each one (7) hand-written pages long. One should not need a law degree to understand their constitutional rights.

Please acknowledge receipt.

Thank you

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Defective Warrant

The December 2009 Bradley search warrant was constructed and executed in a manner so blatently outrageous that it simultaneously assaults multiple principles of the 4th Amendment. The deficiencies were not limited to subtle technicalities but offended basic and core privacy rights. The case would serve well in a law school course demonstrating various ways the 4th Amendment might be violated.

First lesson: the nature of a pretextual search. Next lesson - failure to establish probable cause with a nexus to the items sought. Next lesson: deficiencies of particularity - times two - both items sought and location where they would be likely found. And the next lesson brings us into the 21st century with a computer search to which police seem to think there is no 4th Amendment limitations what so ever - that simply since a file "might" exist the entire mass of digital data is fair game. Truely the case is "stranger than fiction." I can't imagine constructing a case that, if upheld by the court as a legal search, could better destroy the Fourth Amendment. Multiple case law decisions would be overturned by this single case.

The police conduct, or I should say mis-conduct, is so rich with attackable issues that there has been an overshadowing of the magistrate's errors. The magistrate enjoying 'great deference' has also committed multiple errors which have gone 'unhighlighted'. Remember, as stated in Leon, "the deference to the magistrate is not boundless"

A judge should be held to a higher standard than a police officer when it comes to enforcement of constitutional rights. First its presumed the judge's academic preparation, typical law schools would ideally prepare him for accurate decisions. Second - constitutional law enforcement is ultimately a judicial function - an oath is taken to uphold the constitution of the united states. A Judge knows full well how sacred a citizen's privacy rights are, and realizes the power his signature holds on a warrant which will invade there rights - that this signature should be reserved for only cases where facts support probable cause. In contrast a policeman's primary function is public safety and a law degree is not typically required. To take an approach "forgive them for they know not what they do" would be easier to apply to a policeman than a judge.

I believe that even with the greatest of deference to the judge, the December 2009 search warrant was fatally deficient and in violation of the 4th and 5th Amendments. Defense briefs have already disclosed the contention that the judge had no articulated connection between the items sought (medical records) and the crime alleged. My hope now is to present the facts in a manner which will illuminate the Judge's derelection.

(2)
"defective warrant"

"It may be that it is the obnoxious thing in its mildest and least repulsive form, but illegitimate and unconstitutional practices get their first footing in that way, namely by silent approaches and slight deviations from legal modes of procedure" (Boyd)

The target of "medical records" seems so non-intrusive one is tempted to be flexible in interpreting the language of the 4th Amendment. With a good faith reliance on Elliott's presumed good faith, the judge included "digital records" as a target of the search merely on the hypothetical possibility they might exist. This departure from a standard requiring a deduction that "digital records probably do exist" ordinarily would go unrecognized. Since police could not possibly retrieve something that did not exist, the difference between "might" exist and "probably does" exist would ordinarily be unimportant - no possibility of seizing the "wrong" item. But in a pretextual search good faith is thrown into the wind. Police exploited the "might exist" to justify a prolonged general search - targeting anything which might exist and with no limits on location on the possibility they could exist anywhere - even above a doorway in a building crammed with junk. The icing on the cake is how easily Det. Elliott could have provided the facts to the magistrate supporting his desire to search for digital files. Elliott by passed multiple opportunities to establish probability by multiple witnesses. He engaged office staff in retrival of records but in order to preserve his pretense never wanted to be told the digital files in fact didn't exist.
The principle "nothing is to be left to the discression of the officer" serves to filter out pretext without confrontation and is not meant to label police as idiots.
Magistrates need to be preemptive in their literal accuracy even to absurd levels given a search warrant itself is an absurdly drastic action.

"The proceeding by search warrant is a drastic one"

The VonderAhe court reviewed the search and seizure of a dentist's records. The court stated "There were various ways by which these records could have been obtained"... "The Agents could have asked for them; they could have subpoenaed them, or if they thought there was a danger of destruction they could have sought a warrant."
"To proceed by the 'warrant' method without first seeking the desired papers by request or subpoena should be based upon the strongest showing of necessity but if such a drastic procedure is to be availed of it should be strictly limited as constitutionally required"

(3) "defective warrant"

As in the VonderAhe case, the judge bypassed the usual means of obtaining records and "jumped" to the 'warrant' method in December 2009. This was done absent any facts (or even suspicions) supporting any belief files might be hidden. If the files were suspected to contain incriminating information, facts would need to be articulated supporting this conclusion. (If incriminating nature was suspected a possible 5th amendment violation would be entertained.)

The 'warrant' method also invaded the children's privacy rights. Family court routinely subpoenas children's records but care is always taken to have a signed release by a parent or guardian. In the case at bar I have not seen any indication of the eight children's parental consent. Child #3 alleges only "too many kisses." Here there is no issue of an inappropriate vaginal exam. There is no issue that the kisses themselves were inappropriate. No crime at all is referenced. Yet her records were seized and her privacy invaded. What if the 'kisser' were not of concern but police were investigating the child's father. Perhaps lack of probable cause to obtain records of child 3 in relation to her father could be bypassed using pretext. The implications are tremendous. A political candidate who refrains from making a disclosure of a medical condition having a physician legally bound to confidentiality might have his chart invaded on the grounds his possible 'digital records' might be intermixed with another one of the thousands of patients. Suppose this doctor diagnosed the candidate "bipolar" and despite the fact another more qualified physician ruled the diagnosis out the candidate became politically destroyed.

The idea a physician's entire collection of private digital files as well as the private files of an entire medical practice involving hundreds of patients is all "fair game" simply because digital files might exist anywhere and in any form is repulsive to anyone who has even a minimal respect for the 4th Amendment.

The warrant is so strongly based on speculation and inference that it becomes hard to find even a basic premise for an anchor. Nothing is more basic than a need for clarification of who the alleged victims are and what specific crimes are they alleged victims of. The warrant for search lists six 'witnesses' and eight 'child(ren)' but fails to identify specifically as a 'victim' any of the fourteen individuals. Not so with the arrest warrant which focuses on child #8 alone with specific charges supported by facts related to child #8 alone.

One is left to speculate which of the children one through seven were also victims and of what crimes. Are digital files or medical records of children 1→7 each justified individually in their own right, or is there some connection to child 8 whereby they are collectively justified.

(4) "defective warrant"

If a premise is accepted that more than one of the eight children were victims of an alleged crime (s), each child must have supporting facts and a specific crime identified. For any child not identified as a 'victim', some nexus or relevence to the other child who is a victim must be presented.

The defense brief has already raised the objection that the warrant failed to articulate how or why the items sought would relate to the investigation. The State and Judge Carpenter excuse this deficiency on the grounds that the connection is so obvious that it need be accepted as a matter of common sense. This is an "emotion fallacy" tactic whereby one resists disagreeing lest he be labeled "lacking common sense."

But even if one is willing to accept that which is "inferred" along with that which is "stated", the basis still need be "substantial". A possibility that some child might have had some medical visit on some day in September is not a substantial basis to support an implyed nexus to either a victim or a crime.

The judge's premise is vital to an accurate interpretation of his intentions as to what might be searched or seized. Absent a clear premise we can only focus on what the affiant requested and compare and contrast what the judge approved.

Affiant: "your affiant believes that evidence may be found on Dr Bradley's computers and on digital recording equipment that will be able to corroborate statements made by witnesses, help in identification of other victim in this search warrant" "your affiant also has knowledge that doctors use computers to store patient records and details of the patient's visit to the doctor" Elliot then justifies this search by a statement "no evidence to support that Dr Bradley has changed his behavior in regards to physical examinations, kissing and the use of computers."

No witness statement expresses any connection of computer use to comission of any crime. Indeed not a single child one through eight included in their complaints any computer use what so ever, of course witness 2 mentions digital pictures of patients and manipulation on computer (using 'ELMO'), but he does not allege any crime or reason to believe any of the eight identified children were involved.

The purpose of a search and seizure is to support probable cause which already exists, not to find probable cause which might support a mere suspicion. Not every asserted fact by virtue of its probable truth justifies the intrusive nature of a search warrant simply for "corroboration." Only facts related to probable cause and after proper demonstration of valid nexus to a crime are legal targets. A photograph of a patient with Elmo's head might well exist, If a crime of copyright infringment were alleged, it might then be fair game.

Identity of children was fully known and not an issue for which corroboration was either needed or relevent. Each of the eight children were 100% identified. The only reasonable interpretation of Elliott's request to find "identification of other victim" is that the search was meant to serve as an instrument in finding a new victim for whom no facts supporting probable cause had yet been found. An application of this type is blatently general fitting for a fishing expedition. But application for a general warrant is harmless provided the magistrate does not approve such a general warrant.

Now in light of the affiant's request one can better analyse the judges choice of words in the approved warrant. To better focus this analysis one should recall the supreme court decision in Anderson v state of maryland where the court interpreted the warrant's seeking "evidence of crime this time unknown" as meaning "any evidence of any crime" The court found it worthy to mention "The challenged phrase is not a separate sentence."

Judge in 2009 warrant: here there is a single sentence which for the purpose here I will only supply the ending
"and any other alleged victims that come forward from the time the search warrant is signed until it is executed."

The warrant was valid a full ten days.
The concluding statement in effect says "Neither burden nor bother, either yourself or me, with any need to collect facts supporting probable cause should you wish to expand the search and seizure"
As such was declared an open season for review of any child for any crime.
this "don't bother me" clause may have been motivated by a lazy retreat from duty rather than intending to give the warrant the (I presume illegal) expansionary nature. But despite any distain the judge might have for my privacy rights, he should have at least respected the privacy rights of any new victims and show them some level of concern.
A new victim's set of facts and circumstances may even have justified a modification of the targets of the warrant, not just by adding additional names, but by justifying an expanded scope! Child #9 might have complained of a video filmed during the visit for all the judge knew.

Reading the warrant one might reflect on each child one through eight the probability of a crime, and if a crime, which one.
The earlier children were referenced in the 'Milford' investigation. They were followed by several children

"detective warrant"

from December 2008, then finally child #8 from December 2008 some reflection must be utilized to place each child in a proper context.

Not only an issue of staleness applies to multiple children, the passage of time actually diminishes likelyhood of victimization of several of the children.

It's not clear if the children from the Milford investigation were subjects of new interviews by Elliott for confirmation or if Elliott simply rehashed their accounts. The wording however seems to suggest Elliott had no direct involvement. The Milford or State police are not on record as having signed any successful affidavit. There was no search or arrest. When an affidavit is sworn there evolves an accountability. The affiant is not only responsible to relay factual information but is obligated to include exculpatory information when applicable. When Elliott reproduces statements received by Milford police they are not "certified" by any sworn statement. No one is held accountable. The information is second hand and can not be used by a magistrate with the same weight as sworn facts.

> See Aguila v Texas 378 US 108, 84 S ct
> A police officer who arrived at the 'suspicion', belief or mere conclusion that narcotics were in someone's possession could not obtain a warrant. But he could convey this conclusion to another police officer, who could then secure the warrant by swearing that he had 'received reliable information from a credible person that the narcotics were in someone's possession'

Elliott was directly involved with several children from a year earlier in 2008. The passage of a full year renders the children at 2008's information stale. In light of Elliott's disclosure of the Children's Advocacy Center findings regarding child #8 it can naturally be assumed the children of 2008 who also had CAC interviews had some CAC "closure". A logical assumption is that the complaints were deemed 'unfounded' since no charges developed. But even if by some unlikely possibility CAC 'kept these cases open' Elliott was obligated to include such information. Elliott chose to remain silent on any information on how these cases concluded. If CAC cleared me, Elliott chose to instead maintain suspicion by failing to articulate this conclusion. So not only Elliott supplied stale information, he deliberately avoided updating the information. Elliott himself chose to include the 2008 children in the warrant. He alone determined that the 2008 children had relevance to the construction of probable cause. Since it was his choice to include these children he was obligated to "update" the information provided to the magistrate.

The reason the magistrate included these charts can most likely only be explained by 'surpicion'.

The State of DELAWARE has a medical board as well as the CAC with personal trained in forensic evaluation of medical records.

It is absurd that the Judge would feel obligated to have Elliott review the medical records to unravel that which the experts missed.

One example of a "prejudicial conclusory statement" provided by Elliott was the "pattern of gift giving after genital exams." This implied a sort of reward system for sexually stimulating activity by children. Such a pattern might very well be of significance. But included in the four corners of the warrant is a witness statement which clears up this suspicion. This needs to be unburried by the magistrate - not Elliott's fault if missed. Elliott hoped the statement's isolation from the statement of witness 4 would allow a preservation of the implyed suspicion. Witness 4 stated "Kisses their forehead and cheek - ALWAYS gives them prizes after their visit, trusts (Bradley) 100% with her own children"
In fact the gift giving was universal and of course there would be no reason to withhold a gift simply because a genital exam was done.

To comply with DEL Code 2306 the judge was obligated to "substantially allege the cause for which the search is made ... in relation to ... things searched for. As stated in Myers v Med Center of DE, the magistrate must be provided with a substantial basis for determining the existance of probable cause. This basis must be a factual one. It can not be founded on mere conclusory statements provided by the officer which give the magistrate virtually no basis for making an informed probable cause determination.
If the language of the warrant fails to articulate this substantial basis, the warrant does not meet the legal requirement. If an inferred basis is allowed to replace a stated basis, and what a slippery slope that would be, any inferred basis must be substantial, when Carpenter tried to construct possible examples of motivations so implicit as to be exempt from any 4 corners requirement, these examples were far from substantial.
"Warrants should not be subjected to microscopic dissection - but the warrant plays a critical role under the 4th Amendment At some point flexibility becomes breakage. If the affidavit were allowed to broaden the warrant - judicial officers would be transformed into little more than a "rubber stamp."
(Doe v Broady)

Computer Search

Computer technology has advanced exponentially and at times threatens to render 4th Amendment principles obsolete. As guardians of the constitution, courts, even those most sympathetic to law enforcement, have been careful to construct legal theories which preserve the spirit of the 4th Amendment. Despite their good intentions however, at some point flexibility becomes breakage. When reviewing computer search case law it may be difficult to find a unifying principle. Each search of computer data is subject to a unique scrutiny based on the specific facts of the particular case. "A measured approach based on the facts of a particular case is especially warranted in the case of computer technology which is constantly and quickly evolving" (Comprehensive Drug Testing)

Transcending the specifics of any given case is one fundamental principle or premise which might be expressed in several ways.

> "if the warrant is read to allow a search of all computer records without description or limitation it would not meet the 4th Amendment particularity requirement" (Burgess)
>
> "Granting the government a carte blanche to search every file on the hard drive impermissibly transforms a 'limited search' into 'a general one'" (Stabile)

As noted in Stabile, "to reconcile these competing aims, many courts have suggested various strategies and search methodologies to limit the scope of the search"

The particular facts in one case might support such an expansive scope as to be virtually indistinguishable from a "general warrant". But another case which would desire to mirror this broad licence must also meet an equivelent burden of supplying sufficient facts supporting probable cause. It so happens that a large percentage of computer related cases involving 4th Amendment issues involves child pornography.

Child pornography by its nature provides an example where by "there may be no practical substitute for actually looking in many (perhaps all) folders" (Stabile). But Detective Spillan's extensive experience in searching for child pornography does not provide him with a license to approach all his computer searches with identical methods. 4th Amendment protections required Spillan to limit his search to the narrowest scope possible under the specific circumstances. Some criticism of Spillan's search, although very strong, is still somewhat subjective. But a substantial amount of criticism is concrete and objectively based → unconstitutional even by the most forgiving interpretation.

"It is unrealistic to expect a warrant to prospectively restrict the scope of a search by directory, filename or extension or to attempt to structure search methods → that process must remain dynamic" (Burgess). Defense briefs have already emphasized the outrageous truth that Spillan did not know or use the eight children's names in the search for their records. In the context of this case such an oversight defys common sense. But law does not specify any requirement names be used in any computer search. More important is the fact Spillan had NO SPECIFIC IDENTIFYING INFORMATION on the eight children, none what-so-ever. (see day 2 suppression hearing) Spillan quote: "To be honest with you, I didn't know what to expect to find"

While Spillan not having the names was offensive to common sense, his failure to have any criteria where by to limit or complete his search was offensive to the law.

I will now review the Spillan search from the perspective of a few courts. Of course no single court's approach has yet to be declared definitive, still the exercise can be enlightening.

"Burgers" court

"Respect for legitimate rights to privacy in papers and effects requires an officer executing a search warrant to first look in the most obvious places and as it becomes necessary to progressively move from the obvious to the obscure. That is the purpose of a search protocol which structures the search by requiring an analysis of the file structure, next looking for suspicious file folders then looking for files and types of files most likely to contain the objects of the search by doing keyword searches." "But in the end there may be no practical substitute for actually looking in many (perhaps all) folders.

One should be able to assume facts supported probable cause that digital medical files would likely be found in the outbuilding. Of course facts do not support this premise, but for purposes of reviewing Spillan's search lets assume a good faith reliance on the warrant rather then pretext. Spillan's mission to find eight children's records, looking in a place where they were likely to be found, and without any evidence that such files would be hidden — should have been straightforward and without any expectation of a need for a prolonged search. Prudence would dictate that he would look in obvious places first and since investigation and magistrate previously identified the location (as particularly as possible) the recovery should be quick. Of course success was impossible for two reasons: first Spillan had no identifying information on the children, second, digital files never existed in the first place. But lets continue assuming good faith.

A simple opening of the computer's directory might well have revealed a folder entitled "medical records." From the police point of view this is what should have been expected, not a lucky stumble. Yet Spillan doesn't start with the obvious. Spillan, who testified "my practice is to start with the smallest pieces of media first," decided to open a thumb drive first. This first opened file was extremely obscure. Nothing in the warrant nor revealed by the search supported any relevence to a deleted file named "September 30 2009" Spillan's strategy is convoluted. Rather then attempting to devise a method whereby relevent files would be exclusively targeted, Spillan uses a reverse logic. Look first at the files and then later find their relevence by consulting with Detective Elliott.

A medical file: (1) would not be stored in deleted form.
(2) would not typically be a video
(3) would not be filed using a date as a file name.

No medical practice elects to keep records in deleted form. Shredded paper files are not placed in containers and arranged alphabetically on shelves. A medical record has an implyed endorsement of the physician who keeps this record.

A deliberate deletion of what might have been a medical record invalidates this file as a medical record. A deletion supports the conclusion that the physician did not deem the file to be of any value. more importantly, file prior to deletion may have been dangerously detrimental, perhaps listing an incorrect allergy or listing information from the wrong patient.

Of course there are many reasons a file might be deleted. some innocent - both deliberate and accidental, and some not innocent such as to conceal incriminating evidence. But deletion in itself does not establish criminal intent to conceal. An officer interested in opening a deleted file is free to present facts to a magistrate requesting a warrant. Spillan had no warrant to open a deleted file, nor any stated facts which likely would have enabled him to get such a warrant. Spillan had no reason to assume warrant permitted an expansion to include video. Carpenter's support of Spillan hinged on a fabrication which Carpenter himself created. Carpenter incorrectly gives reference to the warrant as stating "not uncommon for Dr Bradley to videotape or photograph his patients." "Videotape" was a Carpenter embelishment, not from the 4 corners of the warrent as relevent to patient records. No reference to video is made for even a single one of the eight children. In fact Spillan testified that his belief that video was relevent came not from the warrant, but from later discovered information such as a video camera being found in an exam room. This finding might have supported a new warrant, but not necessarily. Time passage is a dynamic process and new facts do not necessarily develop in isolation but must be viewed in the totality of the circumstances. If prepared in good faith, a new warrant application would need to provide the new facts - that paper hard copy charts were recovered, that office computers were examined by Garland and determined not to have digital records. While doctors may keep digital records or may keep paper records, it is highly unlikely they would keep both.

Carpenter proposes an implyed nexus between the file's name "September 30 2009" and a single one of the eight children - child #8. child #8 was a patient within this time frame. But child #8's records had already been recovered the day before, a fact which Spillan should have been privy to. There was in fact no connection between child #8 and this date.

A medical office would never elect to arrange patient records by date with two possible exceptions, neither of which apply here. One exception would be an unusual situation whereby the practice sees only one single patient per day. Another exception would be filing by patient's birth date. September 30 2009 was obviously not one of the eight children's birthdays.

Not only Spillan could have set aside the thumb drive pending a new warrant, he could have set it aside pending his own further investigation; Perhaps a few minutes later he would have found the target records when he looked at the computer directory. However unlikely, perhaps further investigation would have revealed a system which in fact did support relevence of files listed with date names. Maybe he would find some clue as to why a file might be deleted.

whether Spillan desired an expedient recovery or wished to avoid it for purposes of pretext, the choice was not his to make under the 4th Amendment. He was obligated to structure his search methods so as to respect privacy rights. By his own testimony, however, its evident Spillan routinely uses a search strategy which seeks a first sight of child pornography. His premeditated strategy is to not limit his search in any manner, but to search until finding the first glimpse of child pornography thereby assuring a new warrant virtually guaranteed. The game is fixed. The magistrate's 'rubber stamp' is a sure thing provided he doesn't look at the child pornography longer than just finding it. Find the key to the lock and there's no need to enter the door. The door opening becomes a sure bet. Just as a "Jeopardy" player knows to answer in the form of a question, the pretextual search has rules which experience teaches. Skillfully use the plain view doctrine from one object to another until at last something incriminating is found. Play the game right and you even get a gold star for applying for the 2nd warrant, as Carpenter praises Spillan in his opinion.

"Lacy" Court

"In gauging a warrant's specificity we consider three factors:

(1) whether probable cause exists to seize all items of a particular type described in the warrant
(2) whether the warrant sets the objective standards by which executing officers can differentiate items subject to seizure from those which are not.
(3) whether the government was able to describe the items more particularly in light of the information available to it at the time the warrant was issued.

The Bradley warrant did not provide probable cause for nor did it approve - wholesale massive removal of digital equipment and media. However this was effected. As the warrant was constructed there is not an anticipation of relevence for creation of objective standards for discriminating among digital media. The facts gave no hint to the judge that digital search would be such an issue and that massive recovery was a desired goal. If in fact digital media was a central issue, the investigation should have been somewhat focused on this. The investment of time for this investigation was minimal. Simply asking one of the multiple employees or witnesses the question "are there digital files?" Of course for pretext, this question was avoided. The magistrate was left clueless. He assumed good faith, that if digital records did not exist they simply would not be recovered. A reasonable person would anticipate uncomplicated recovery - not a massive collection in all areas including unlikely areas. Once the search was started simple inquiry to office staff could have made the digital search a non issue. After this missed opportunity, recovery of paper charts and Detective garland's pre-view should have surely settled the issue. It must be remembered, police at all times were free to apply for a new warrant.

(5) "computer search"

Comprehensive Drug Testing

Here I will provide a number of quotes. Relationship to the Bradley search are mainly self-evident and need not be discussed, with five exceptions.

(1) "The point of the Tamura procedures is to maintain the privacy of materials that are intermingled with seizable materials and to avoid turning a limited search for particular information into a general search of office file systems and computer databases."

(2) "Since the government agents ultimately decide how much to actually take this will create a powerful incentive for them to seize more rather then less." "Can't find the computer? seize the zip disks under the bed..."
"Lets take everything back to the lab, have a good look around and see what we might stumble upon"
"This would make a mockery of Tamura and render the carefully crafted safeguards in the Central District warrant a nullity" Note in the Bradley case, while not under a bed, police did recover a thumb drive not in plane view but found by feeling over a door way.

(3) "Thus if the government is allowed to seize information pertaining to ten names, the search protocol must be designed to discover data pertaining to those names only, not to others, and not those pertaining to other illegality."

(4) "in future... forswear reliance on the plain view doctrine..."

(5) "in the future... a protocol for preventing agents from examining or retaining data other than that for which probable cause is shown"

(6) "the government must disclose the actual degree of such risks in the case presented to the judicial officer" The context of this quote is that a warrant application should alert the judge of the extent to which the search and seizure might collect intermingled non targeted items. In the Bradley case no disclosure of anticipated dificulty was made. No facts were given which would support a concealment or need to "search" for any files.

"A BRADLEY VIOLATION"

The Bradley case includes multiple issues drawing analogies from a number of cases. A book could be written titled "A dozen ways to Assault the 4th Amendment." Issues include particularity descriptions of both items and location. Pretextual motivation is highlighted by a failed 2008 warrant. The list goes on and on. One mechanism for a 4th Amendment breach has not been addressed in case law, or if it has my lawyers failed to cite this. This mechanism involves the Concept of multiple police independently approaching a search without co-ordination. Multiple police, each one performing a "narrow search", might collectively accomplish the broadest of searches. Each detective could invoke his own unique search method and thereby multiple methods could simultaneously approach the search. One detective could start at point 'A' and work toward 'Z'. Another detective could start at point 'Z' and work toward 'A'. A third detective starts somewhere in the middle, and so on. Should the first detective hit the target when searching 'B', this does not hamper the 'innocent' other detectives still searching. Effectively if enough detectives are employed

the entire scope might be searched simultaneously. Of course only the single detective who succeeded in finding the true target for which this pretextual search was devised comes forward. By appearance this detective was doing a narrow search and his success comes early.

Detective Garland previewed the main office computers, the very computers most likely to be relevent. Detective Spillan showed no interest in coordinating with Detective Garland. This failure to keep current on the status of the search resulted in Spillan opening a file merely on a hypothetical connection to child #8, a child whose records had already been recovered.

Communication and coordination should be a legal requirement when multiple agents are involved. Otherwise police could craftily create search methods which circumvent the 4th Amendment restrictions.

Spillan search

Spillan's particular Bradley search has already been highlighted with its major deficiencies. I will now discuss Spillan's routine approach to digital searches as evidenced by his own testimony. His approach is not constitutional.

Occasionally digital searches need to be expansive due to the nature of the material sought. A likelyhood of the existence of hidden contraband is a prime example. Even with this likelihood not all searches are equal. Probable cause might support a search and seizure of a canceled forged check to the electric company. This might be disguised and hidden in a 'home movie video' file. Once found the search stops. Further search which might disclose forged checks to other companies is prohibited unless specified in the warrant. In contrast, a search for child pornography does not expire until the entire collection is examined. Spillan chooses the child pornography model, which happens to be the broadest. He doesn't tailor his search method as constitutionally required. With an intent to view 100% of the digital material — with no prospect of successful retrieval prior to completion of that 100% — where the search begins is of no consequence. Spillan testified "my practice is to start with the smallest pieces of media first."

Although Carpenter 'bought this' as logical, in fact the idea is inherently unsound. When it comes to privacy rights "size doesn't matter." There's no exception in the 4th Amendment for matters of "small size." A small folder may in fact be the most private or even perhaps the only private folder. Rather than weigh the likelihood of probable success in various locations, Spillan elects to let small size prevail. The very nature of computer technology makes the approach of "small first" illogical. Outside the context of computers there might be merit. It might take five minutes to search through a shoe box of papers, yet take a half-hour to search through a chest. The time difference is significant. But a computer processor works so quickly the time difference is not of any consequence. A few milliseconds would give no realistic benefit over a few full seconds.

(7) "computer search"

In computer searches, fruitful outcomes tend to occur with larger data bases. For example lets say you wish to search for a rare video for sale. A search on ebay might survey vast areas - but only limited seconds. One could not argue the best place to start the search would be some obscure small video store's web site.

The expedient place for Spillan to start should have been looking at the largest central directory. Spillan didn't have just a single thumb drive which he wished to get over with, but had multiple thumb drives. Common sence would dictate looking at a larger source first - then perhaps actually finding the target. Then the trouble of searching multible thumb drives no longer is a burden. Again with a pretextual search with intention to view all, logic does not apply.

Spillan testified that he watches all videos all the way through until finding evidence of another crime. He testified that if he came across 'Bambi' he would watch it through. Spillan did not limit this intent to his searches for child pornography but disclosed he routinely employed this method in all his digital searches. He would watch it through "in its entirety to see if it has any reference to the investigation." When searching for child pornography Spillan naturally would not word it this way. In a search for child pornography which is approved by a warrant, Spillan would be straight forward and say "I watch videos all the way through since child pornography might appear at any time."

Later Spillan testified "I don't know what file would be related until I examined the files." As previously stated Spillan reverses logic - rather than devise a method to look only at relevent files, he looks at the files first hoping to find relevency.

Finally as noted in a previous brief, the incriminating nature of a file called "september 30, 2009" could in no way be immediately apparent. when illegally opened, it was immediately apparant that the file was not a medical file, not for about a whole minute did any incriminating nature appear, again not "immediate" as the constitution requires.

Tamura violation

(1) large scale removal should have been authorized by magistrate
(2) specific guidelines for identifying documents should have been provided in the warrant (segregation of intermingled data required)
(3) If doubt, document could be sealed and held pending approval by magistrate

Spillan's discretion to open 'september 30 2009' was not supported by warrant. Better description is "lack of discretion" as Spillan was virtually in a fog. He did not have any information whereby he could find a nexus between a date and any of the eight children. Even on the remote chance that a date might relate to a patient file, in a medical practice of thousands of patients the probability is nil that a given date would relate to one of only eight patients. Spillan to this day, even with the benefit of 20/20 hindsight, can not articulate a theory by which a deleted video titled 'september 30 2009' has relevence in limiting the scope of the search.