

- I. Intro – digital evidence and media affect all areas of military justice practice
 - a. Investigation (search and seizure issues)
 - i. Staleness of information – *United States v. Geranen*, 2023 CCA LEXIS 323 (A.C.C.A. August 1, 2023)
 - ii. Common authority, scope of consent, method of searching, emergency search exception – *United States v. Black*, 82 M.J. 447 (C.A.A.F. 2022); *United States v. Brinkman-Coronel*, 2024 CCA LEXIS 131 (A.C.C.A. March 22, 2024)
 - b. Charging
 - i. Cryptocurrency
 - ii. Deepfakes – question of how to charge AI-generated “revenge pornography”
 - iii. *United States v. Strong*, 85 M.J. 58 (C.A.A.F. 2024) – main issue in this case is when the seizure of digital evidence is complete for purposes of Article 131e, UCMJ
 - c. Discovery – legal possession?
 - i. *United States v. Secord*, 2024 CCA LEXIS 263 (A.C.C.A. June 26, 2024)
 - ii. *United States v. Braum*, 2024 CCA LEXIS 419 (A.F.C.C.A. October 10, 2024)
 - d. Trial
 - i. AI and authentication
 1. E.g., Rebecca A. Delfino, *Deepfakes on Trial: A Call to Expand the Trial Judge’s Gatekeeping Role to Protect Legal Proceedings from Technological Fakery*, 74 Hastings L.J. 293 (2023)
- II. Geofencing
 - a. What is geofencing?
 - b. Is it still viable now that Google is out of the game?
 - c. What is a geofence warrant? A multi-step search warrant that seeks the user information for anyone who was within a certain geographical area during a certain time.
 - i. *United States v. Rhine*, 652 F. Supp. 3d 38 (D.D.C. 2023)
 - ii. Three-step process
 - d. Concerns with geofencing warrant
 - i. Particularity
 1. *Marron v. United States*, 275 U.S. 192 (1927)
 2. *Andresen v. Maryland*, 427 U.S. 463 (1976)
 - a. “The problem posed by the general warrant is not that of intrusion, per se, but of a general, exploratory rummaging in a person’s belongings.”
 3. *Maryland v. Garrison*, 480 U.S. 79 (1987)
 - a. “The manifest purpose of the particularity requirement was to prevent general searches.”
 4. *Ybarra v. Illinois*, 444 U.S. 85 (1979)

- a. "Each patron who walked into the Aurora Tap Tavern on March 1, 1976, was clothed with unconstitutional protection against an unreasonable search or an unreasonable seizure."
 - e. Circuit split:
 - i. *United States v. Chatrie*, 107 F.4th 319 (4th Cir. 2023) (rehearing en banc granted *United States v. Chatrie*, 2024 U.S. App. LEXIS 27770 (4th Cir. November 1, 2024)).
 1. Third-Party Doctrine applied and therefore, Chatrie had no reasonable expectation of privacy in his Google location history and the procurement of that data was not in violation of the Fourth Amendment
 - ii. *United States v. Smith*, 110 F.4th 817 (5th Cir. 2024)
 1. The Third-Party Doctrine does not apply, the two appellants had a reasonable expectation of privacy in their respective data and the third-party doctrine does not apply.
- III. Reverse keyword searches
- a. What are reverse keyword searches? Multi-step search warrants that request the user information for anyone who searched for certain information – typically, addresses.
 - b. *Colorado v. Seymour*, 536 P.3d 1260 (Colo. 2023)
 - i. Appellant had a subjective and objective expectation of privacy in his data
 - ii. Third-Party Doctrine applied, but Colorado constitution provided a "constitutionally protected privacy interest in his Google search history."
 - iii. Good Faith Exception applied
 - c. *Pennsylvania v. Kurtz*, 294 A.3d 509 (Pa. Super. Ct. April 28, 2023)
 - i. Superior court upheld trial court's denial of the motion because of the Third-Party Doctrine, the Google privacy agreement, and the warrant was supported by probable cause
- IV. Searching cell phones, generally
- a. Post-*Carpenter v. United States*, 585 U.S. 296 (2018)
 - i. Mosaic Theory
 - ii. Factors SCOTUS considered
 - iii. See also *Riley v. California*, 573 U.S. 373 (2014)
 - b. Mil. R. Evid. 304(b) – derivative evidence
 - c. Passcode issue – Fifth Amendment problem, rather than Fourth Amendment
 - d. Military caselaw relating to passcodes
 - i. *United States v. Mitchell*, 76 M.J. 413 (C.A.A.F. 2017)
 - ii. *United States v. Robinson*, 77 M.J. 303 (C.A.A.F. 2018)
 - iii. *United States v. Nelson*, 82 M.J. 251 (C.A.A.F. 2022)
 - e. Biometrics
 - i. *United States v. Payne*, 99 F.4th 495 (9th Cir. 2024)