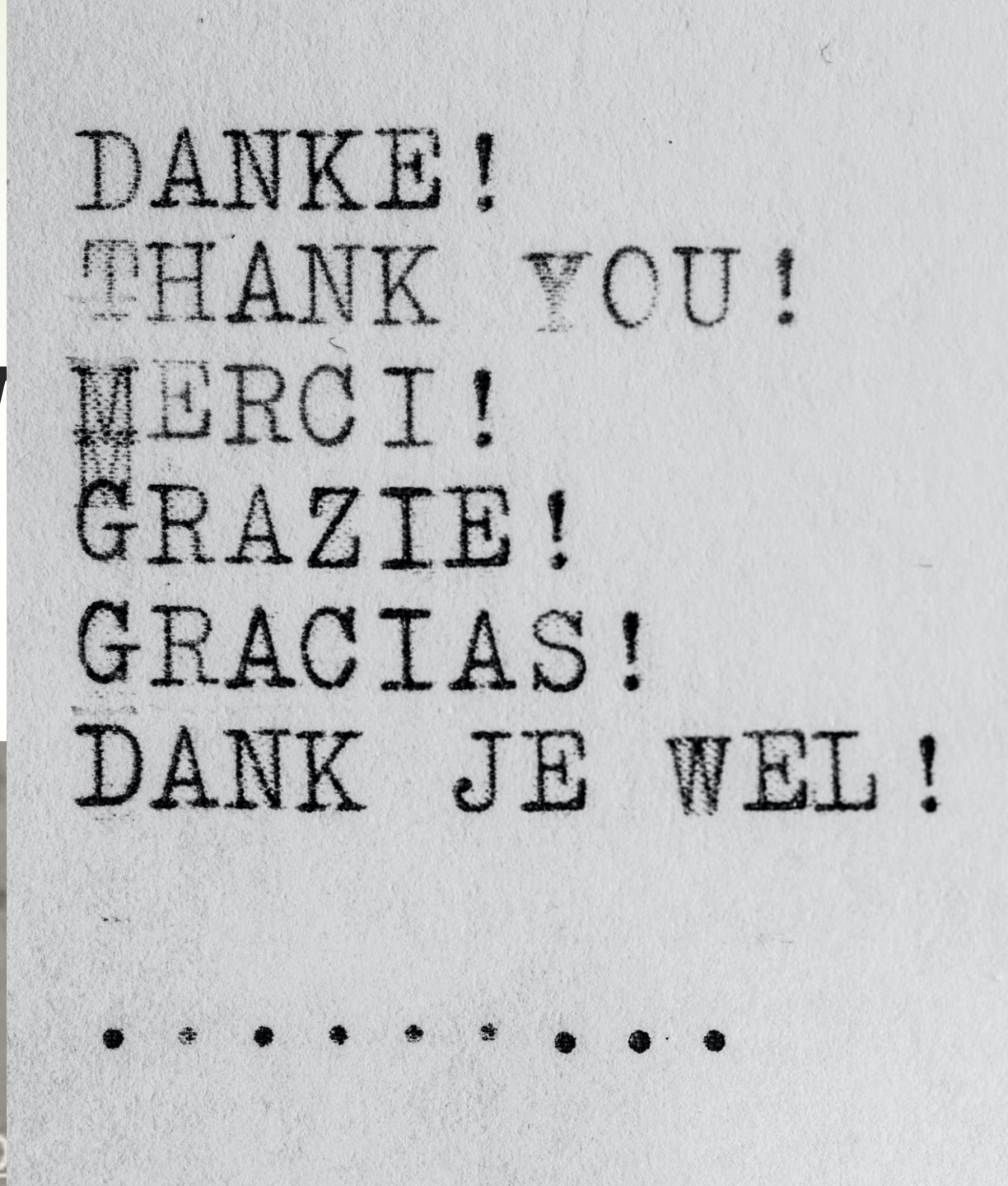
# *Fourth Amer (and more) 2021–22*



# Article and case list

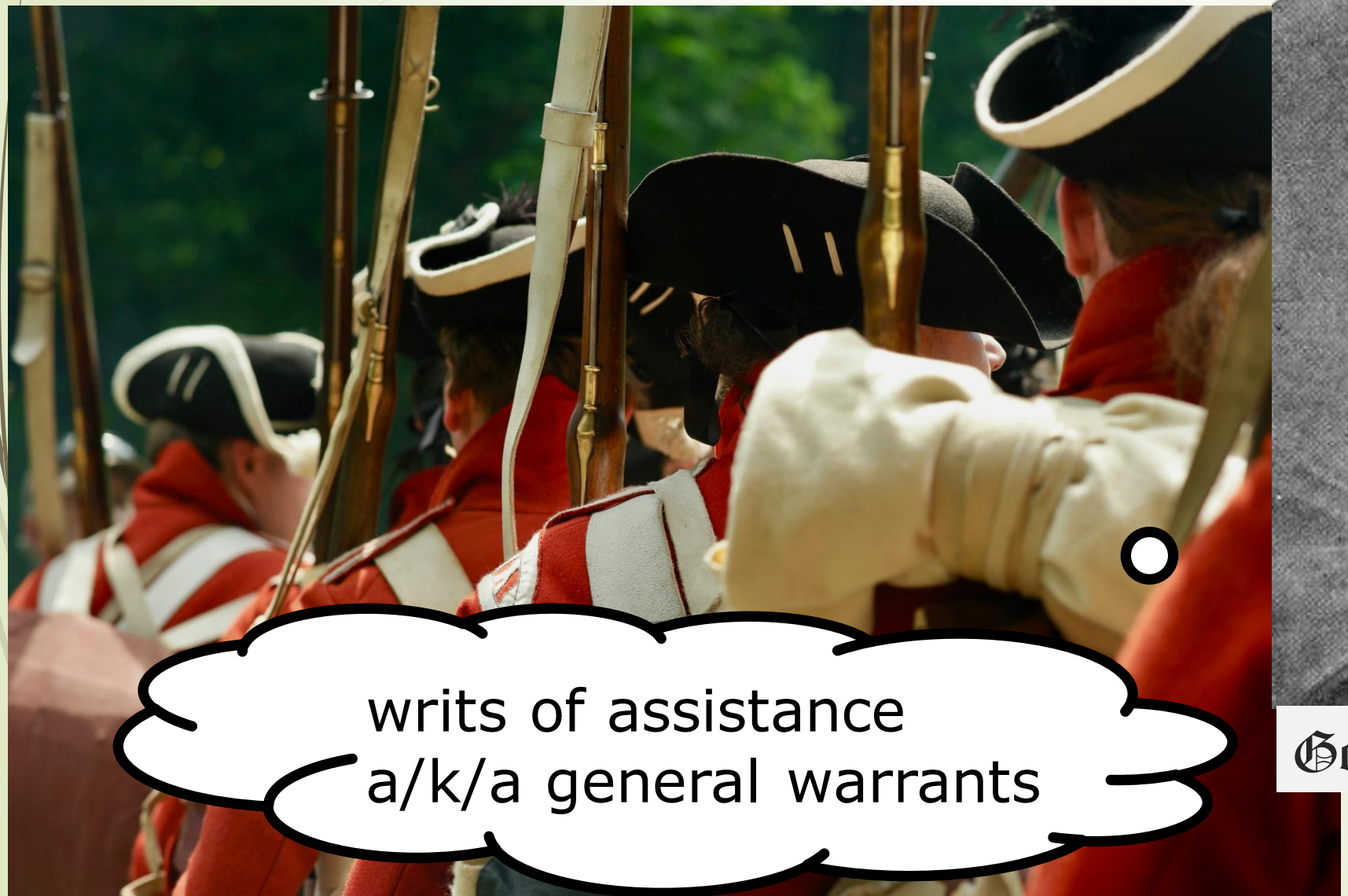


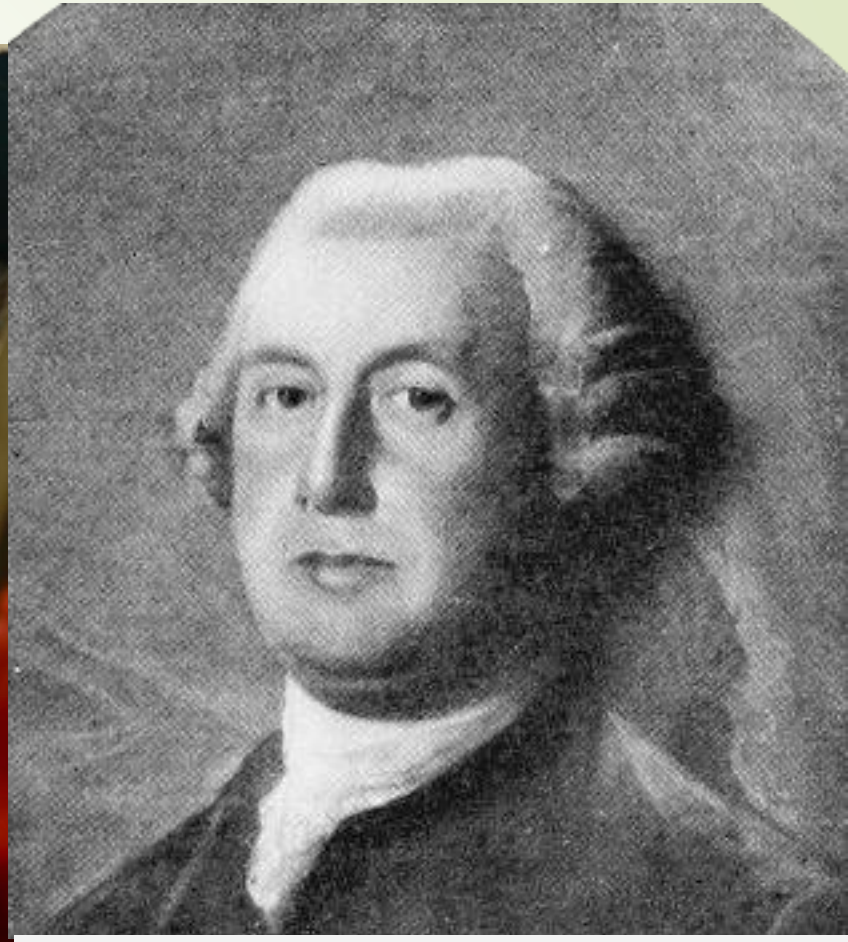
- "*Access denied? Think twice before sharing your device's passcode*," Texas Bar Journal, April 2022, p. 250. *United States v. Black*, 2021 WL 4953849 (A. Ct. Crim. App. Oct. 22, 2021). Also *People v. Davis*, 438 P.3d 266 (Colo. 2019).
- "*A body-worn camera does not dispense the need for a warrant*," Circuits, Feb. 2022, p. 32. *Commonwealth v. Yusuf*, 173 N.E.3d 378 (Mass. 2021).
- "*Ubiquitous cameras make it ever harder to hide*," Circuits, May 2022, p. 33. *United States v. Tuggle*, 4 F.4th 505 (7th Cir. 2021).
- "FAA drone regulation survives constitutional challenge," Circuits, Dec. 2022, Brennan v. Dickson, 45 F.4th 48 (D.C. Cir. 2022).
- "Capitol rioter's motion to suppress Facebook evidence denied," Dec. 2022, United States v. Bledsoe, Circuits, 2022 WL 3594628 (D.D.C. Aug. 22, 2022).
- "*Foreign Internet platform provider subject to specific personal jurisdiction in Texas,*" Circuits, Sept. 2022, p. 14. *Facebook, Inc. v. Doe*, 650 S.W.3d 748 (Tex. App.—Houston [14th Dist.] 2022, pet. filed.
- "*Electronic signatures are binding*," Texas Bar Journal, July/Aug. 2022, p. 498, *see also* Circuits, May 2022, p. 41. *Aerotek, Inc. v. Boyd*, 624 S.W.3d 199 (Tex. 2021).22
- "*Cyberstalker learns a hard lesson*," Circuits, Sept. 2022, p. 8. *United States v. Yung*, 37 F.4th 70 (3rd Cir. 2022).

Picture credit: Matt Briney; Wikipedia;
*Marine Nationale* (of France)



# Fourth Amendment



Governor Bernard, Mass.

Picture credits: Goodfellas (1990); Michael Dziedzic; designecologist; Scott Webb; Matt Seymour



# Fourth Amendment




"Reasonable subjective expectation of privacy"
*Katz v. U.S.*

(Harlan, J. concurring)

The facts o
each case, n
generalizatio



Picture credits: Luke Stackpoole; Ben Vaughn; Dept. of Energy; Jacek Dylag; Daniel Janzen; Ad Meskens



# 4th Amendm



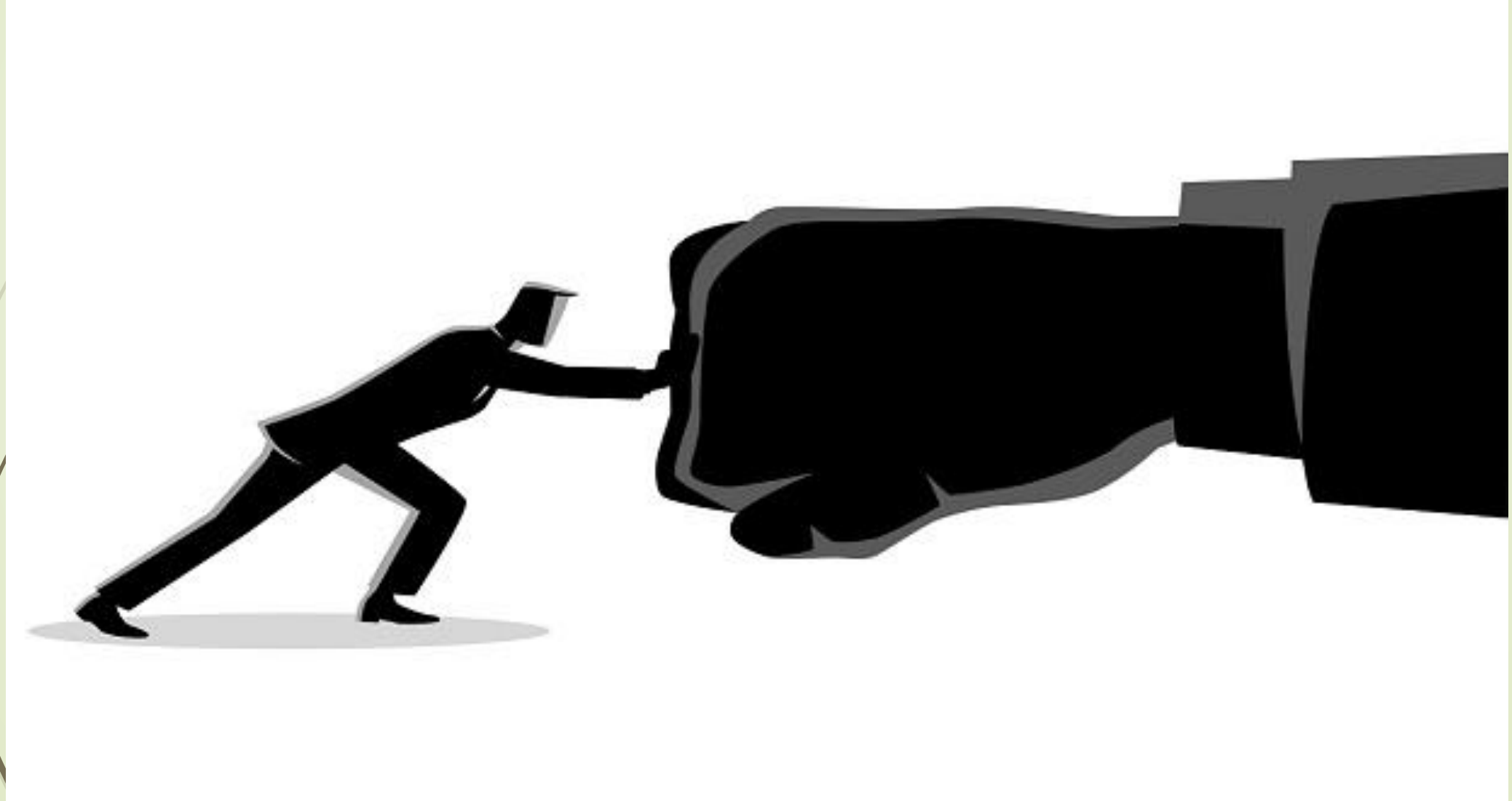






Kyl

# Technology advances; but the Fourth Amendment stands its ground

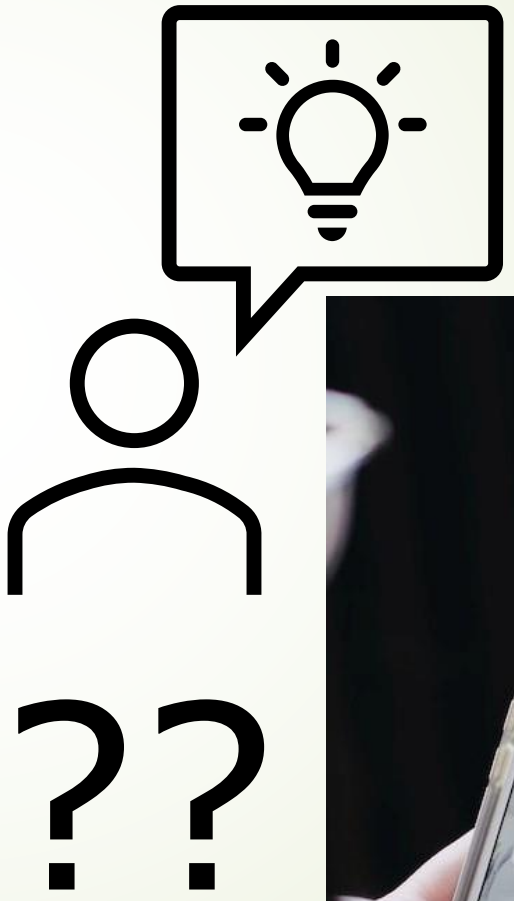



143
144
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Picture credits: Jason Goodman; Sherlock, A Scandal in Belgravia (2012)

*United States v. Black*, 2021 WL 4953849 (A. Ct. Crim. App. Oct. 22, 2021).

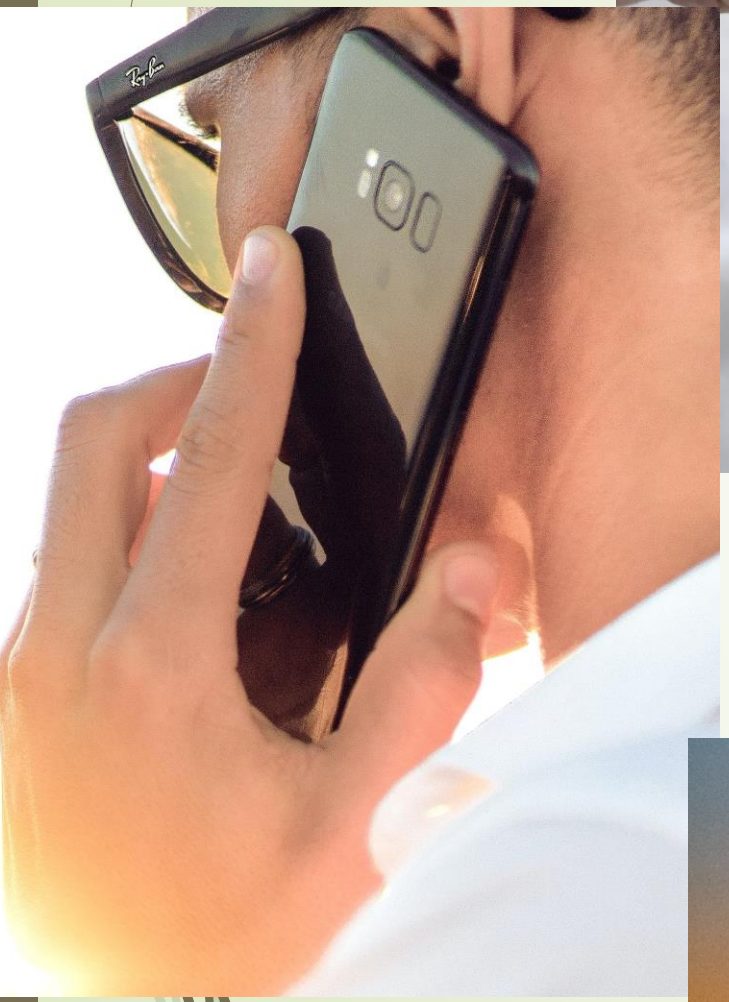


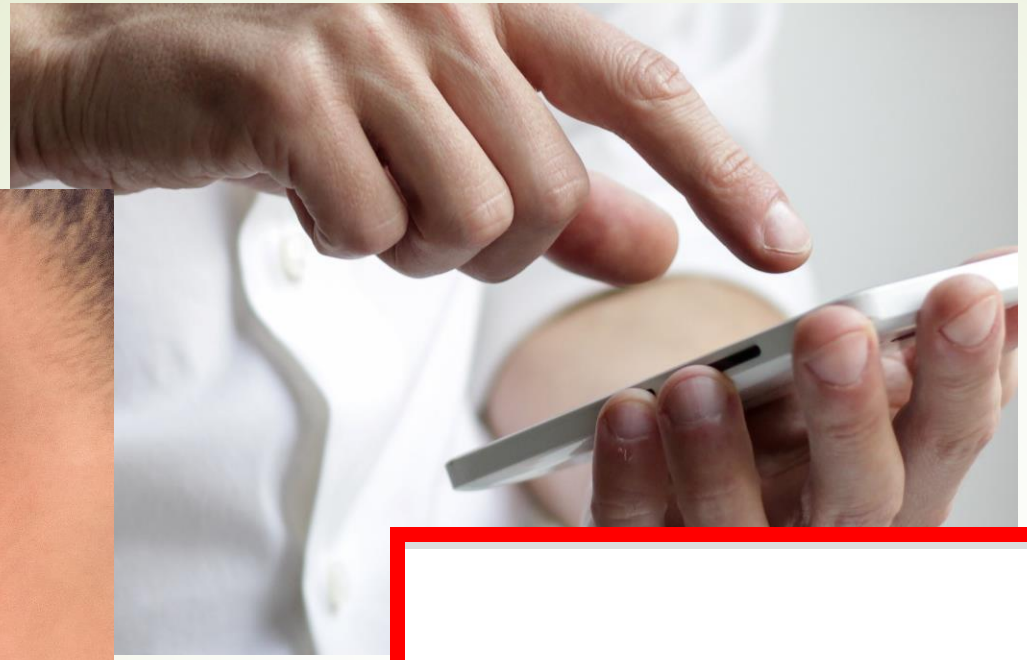



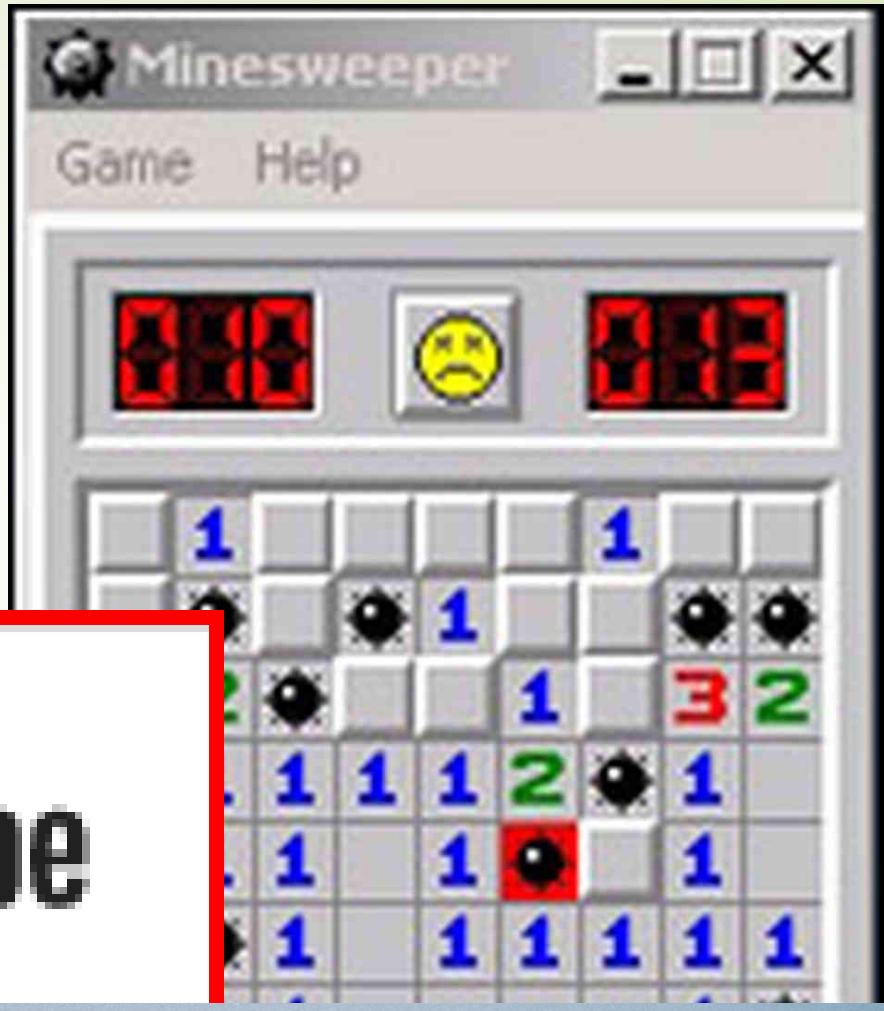



**Picture credits: Wes Hicks; Hassan Ouajbir**



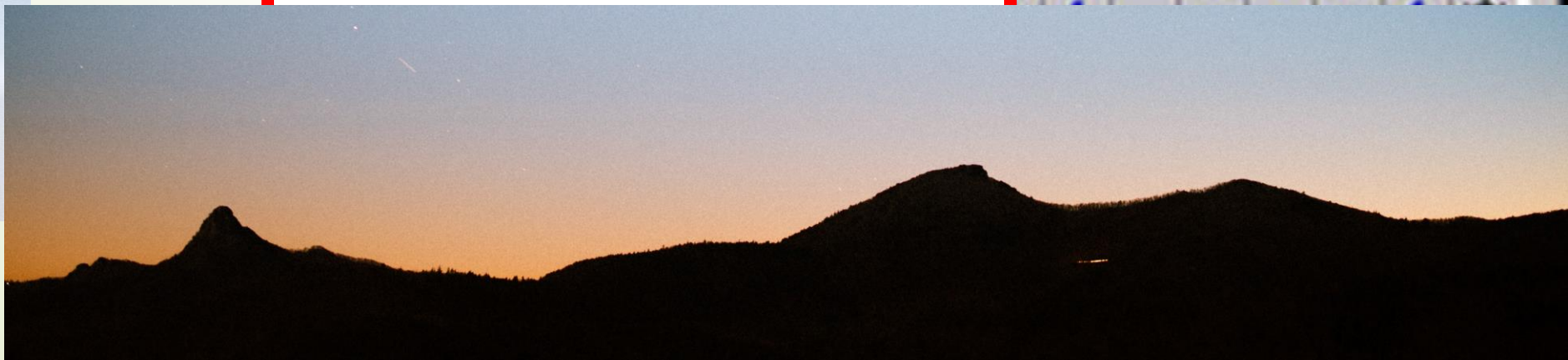












Picture credits: U.S. Navy; Ben Wicks










Child pornography!!

# Motion to suppress?



- Trial court: Granted; no consent
- Court of appeals: Denied

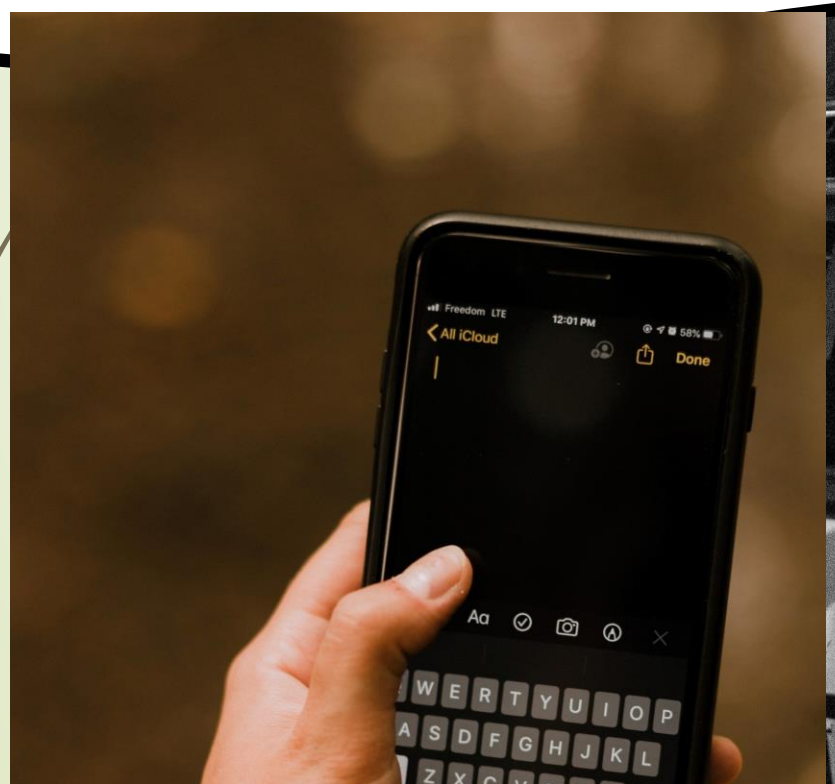
- Granted unrestricted access with password
- Express restrictions are what counts
- Same with the sergeant

Picture credits: Priscilla Du Preez; Tito Texidor III



# *People v. Davis*, 438 P.3d 266 (Colo. 2019).

- No manifest expectation of privacy
- Not reasonable






# *Commonwealth v. Yusuf*, 173 N.E.3d 378 (Mass. 2021).







Picture credits: Tom Def; Josh Miller; Colin Davis



# Motion to suppress?









- Trial court: Denied
- Sup. Court: Granted

Picture credits: MedlinePlus, National Library of Medicine; Nathy Dog



# *United States v. Tuggle*, 4 F.4th 505 (7th Cir. 2021)

Meth dealing conviction



18 months



Picture credits: Nathy Dog; Jaacky Lam; Dept. of Energy; Bernardo Ferrari











# *Brennan v. Dickson*, 45 F.4th 48 (D.C. Cir. 2022).



***FAA Remote ID Rule***:

- Serial number
- Location and velocity
- Control station location
- Time stamp
- Emergency status

Drone registration (Privacy Act 5 U.S.C. § 552a)



Picture credits: Goodfellas; Bernardo Ferrari; Michael Dziedzic

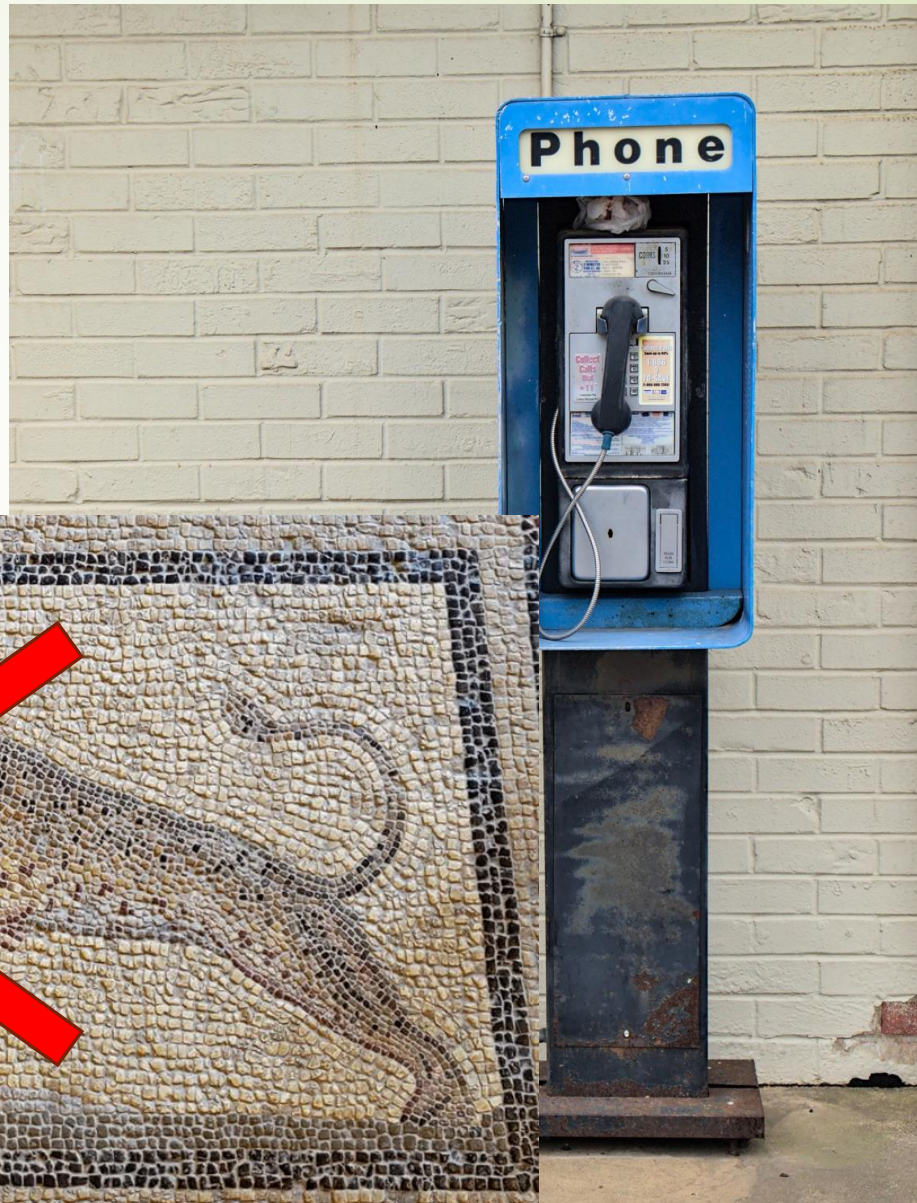


# *Katz v. United States*












Picture credits: Flickr; Brett Jordan

# *United States v. Bledsoe*, 2022 WL 3594628 (D.D.C. Aug. 22, 2022).









# SCA 18 U.S.C. § 2702(c)(4)



Step 1: Account ID



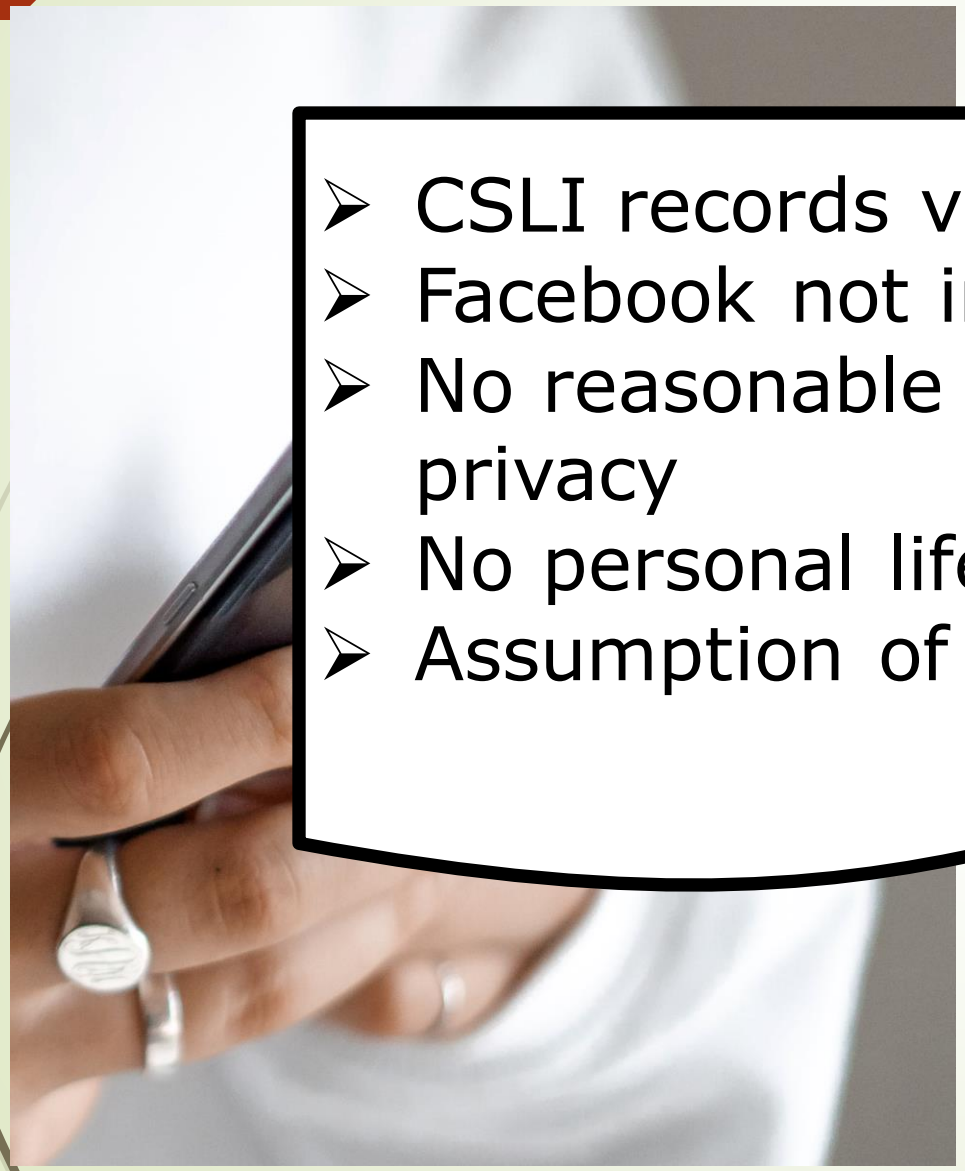

***Third-party doctrine***

- Disclosure of records pertaining to a subscriber or customer of such service (not including the contents of communications covered by paragraph (1) or (2)) to any governmental entity, if [illegible] gency involving danger of death or serious physical injury to any person requires disclosure without delay of information relating to the emergency."

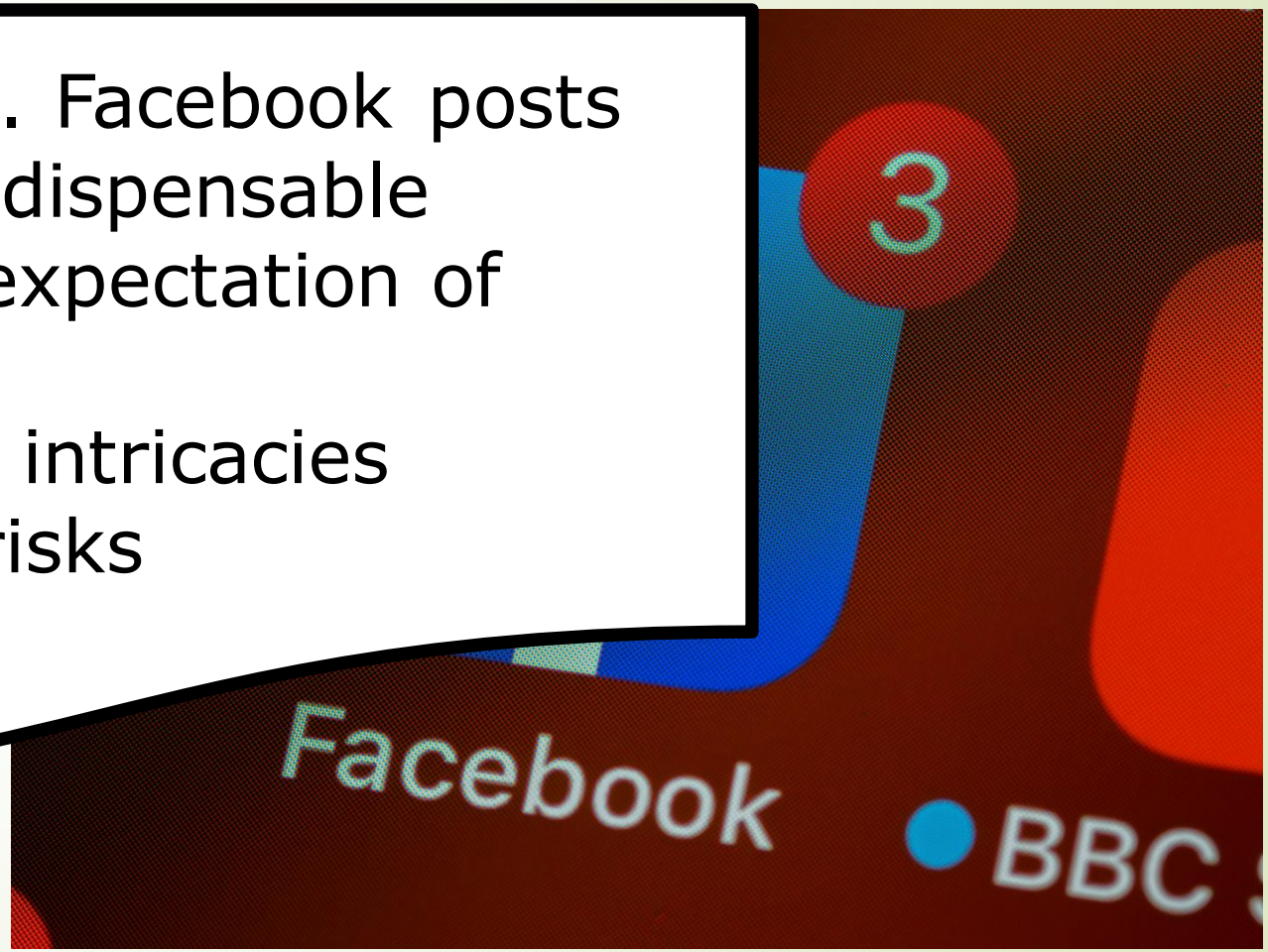
Picture credits: Kelli McClintock; Brett Jordan



# Failed to meet burden



- CSLI records vs. Facebook posts
- Facebook not indispensable
- No reasonable expectation of privacy
- No personal life intricacies
- Assumption of risks



Picture credits: Arno Senoner; Robert Locke; Patryk Sikora



# Automatic license plate readers (ALPRs)









Picture credits: Arno Senoner; Bernardo Ferra; U.S. Army Corps of Engineers; Colin Davis

# *Commonwealth v. McCarthy*, 142 N.E.3d 1090 (Mass. 2020)










Picture credits: Collie Coburn; Anne Nygard; Aditya Chinchure

# *Long Lake Twp. v. Maxon*, 2021 WL 1047366 (Mich. Ct. App. 2021)





Move to suppress drone pics



Picture credits: James Orr; Georg Regauer; Prokhor Minin

# *Kyllo v. United State* / *Florida v. Riley* (19

**Warrant required !**



**Drones:**
**more intrusive**
**less frequent**
**less inadvertent**
**cheaper**
**easier to deploy**



**Agility**
**Speed**
**Stealth**

Picture credits: chuttersnap



# *Leaders of a Beautiful Struggle v. BPD, 2021 WL 2584408* (4th Cir. 2021)

Aerial surveillance:
32 square miles per image per second

Integration with:
~ ALPRs
~ Gunshot detectors
~ Cameras

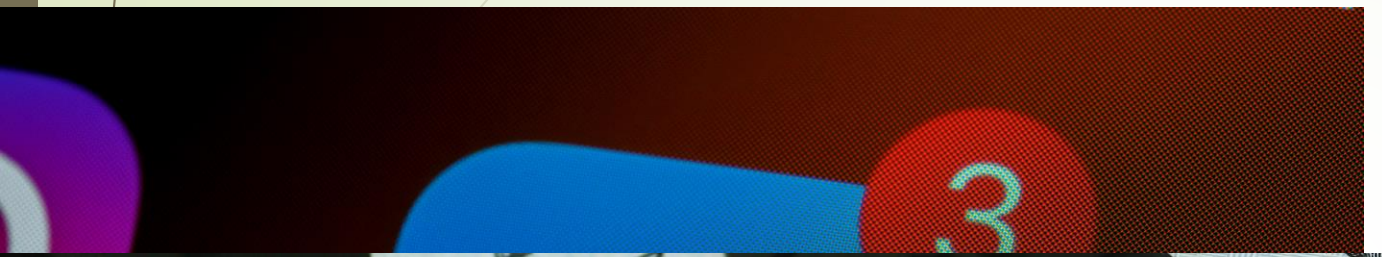



Cell Site Location Information (CSLI)
*Carpenter v. US*, 138 S. Ct. 2206 (2018).

Picture credits: Engin Akyurt; giorgio-trovato; Brett Jordan



# *Facebook, Inc. v. Doe*, 650 S.W.3d 748 (Tex. App.—Houston [14th Dist.] 2022, pet. filed).









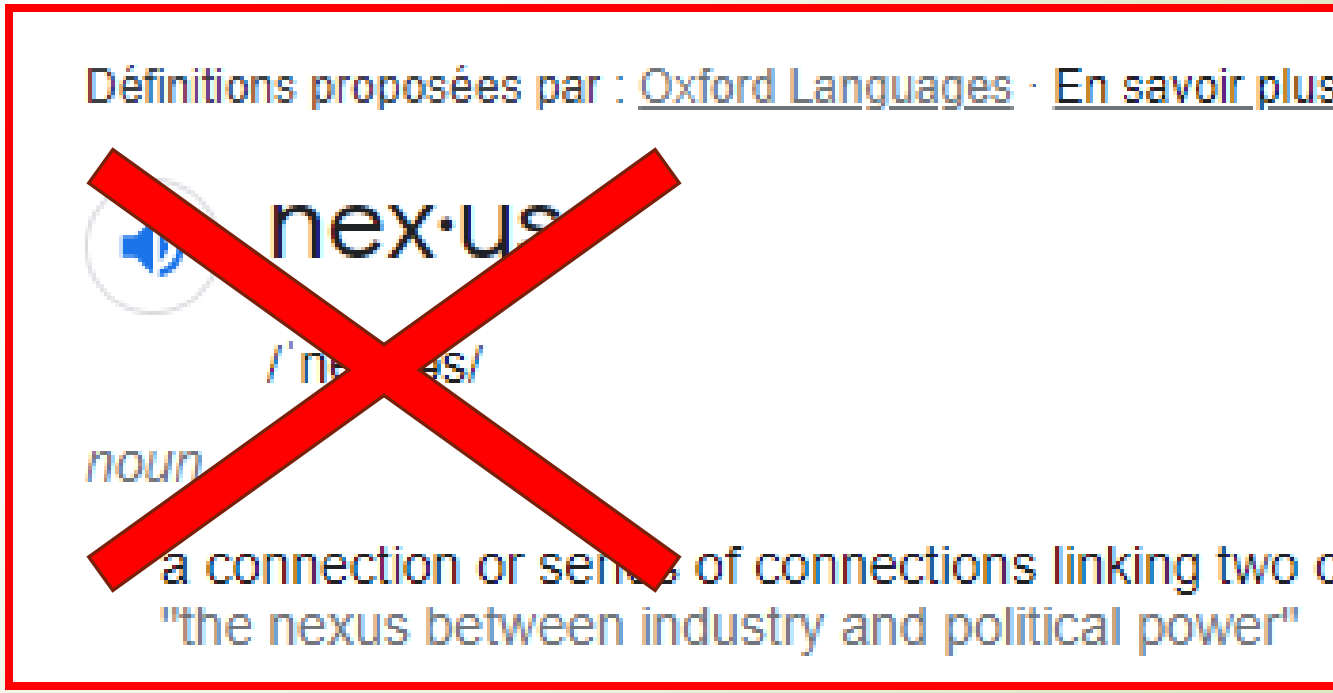
***Procedural; not merits***

# Tex. Civ. Prac. & Rem. Code § 98.002



- Creates a civil cause of action against defendants who:
  - "intentionally or knowingly benefit[] from participating in a [sex-trafficking] venture."





# Personal jurisdiction



- (1) purposefully avails itself of the privilege of conducting activities in the forum state, and
- (2) the lawsuit arises or relates to the defendant's contacts with the forum

Nexus test: merely relatedness, not causation

- Does not offend traditional notions of fair play and substantial justice
- Strong state interest

Picture credits: Glenn Carstens Peters; Yawer Waani



# *Aerotek, Inc. v. Boyd*, 624 S.W.3d 199 (Tex. 2021).

Uniform Electronic Transactions Act, Tex.

***Application***:

- Unique username
- Password
- Security questions



# UETA, Tex. Bus. & Comm. Code §§ 322.001 et seq.

- "An electronic record or electronic signature is attributable to a person if it was the act of the person. The act of the person may be shown in any manner, including a showing of the efficacy of any security procedure applied to determine the person to which the electronic record or electronic signature was attributable."

- A security procedure is:
  - "a procedure employed for the purpose of verifying that an electronic signature, record . . . is that of a specific person . . . [and] includes a procedure that requires the use of . . . identifying words or numbers, . . . or other acknowledgment procedures."

# Mutual arbitration agreement



We did not sign it!

- No evidence to support Plaintiffs' claims
- Program manager testimony sufficiently "clear, direct, and positive"
- Overcame interested witness status

Picture credits: Philipp Katzenberger; Edvard Munch; Georgetown University

# *United States v. Yung*, 37 F.4th 70 (3rd Cir. 2022).

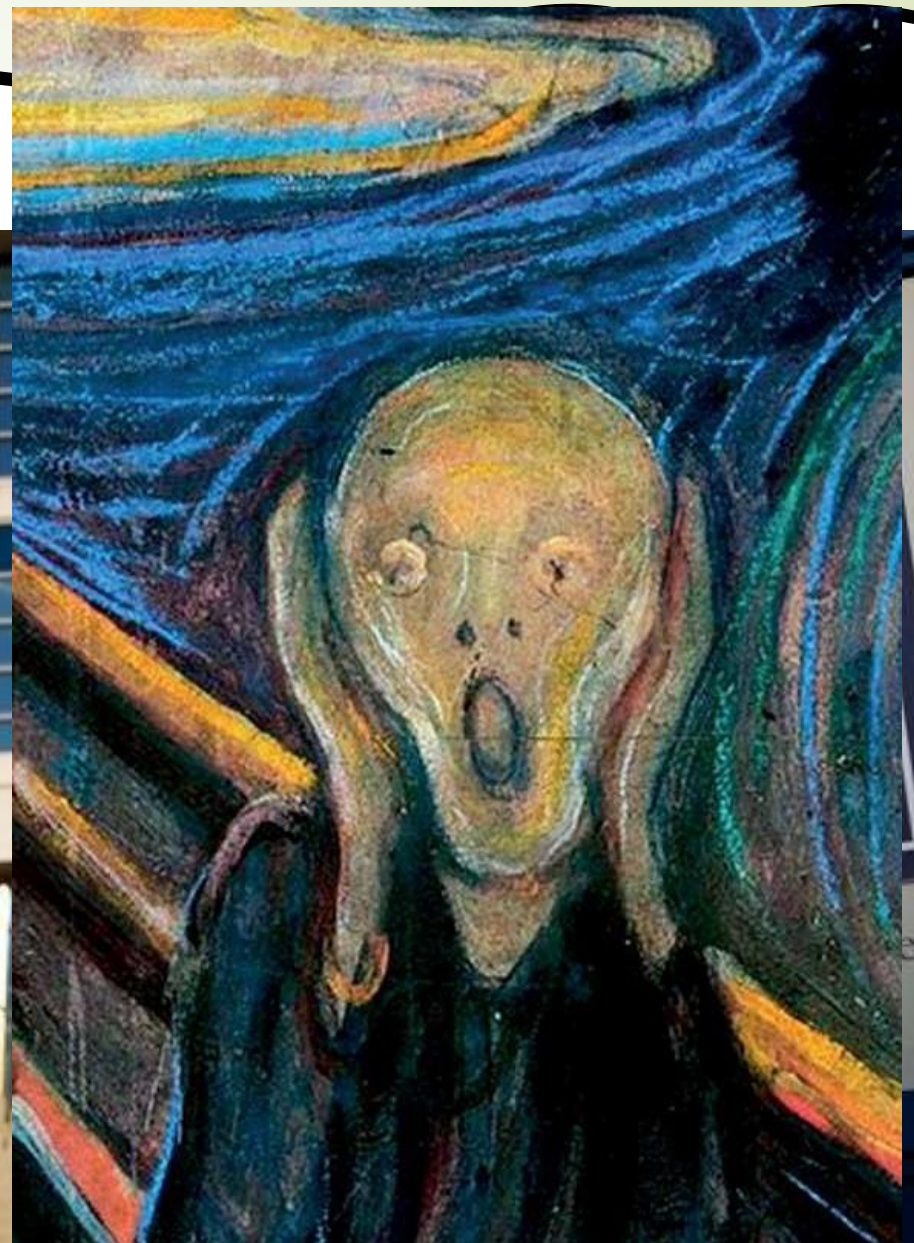
***One year later***:

- Fake social media profiles
- Complaints
- Accusations
- On-line sex adds

Fed

§





# 18 U.S.C. § 2261A(2) (2013).



Facial challenge

***Statute requires*:**
- An act
- An intent
- A result

~~As-applied challenge~~

- The defendant must use a computer service
  - "with the intent to kill, injure, harass, intimidate" to place the victim "in reasonable fear of ... death ... or serious bodily injury," or "cause[ ], attempt[ ] to cause, or ... be reasonably expected to cause substantial emotional distress."

Picture credits: MAXPPP Arnaud Beinat; Laurentiu Morariu; Diego Jimenez

18 U.S.C. § 2261A(2) (2013).



# Canons of constitutional interpretation

# Canons of constitutional interpretation



- The defendant must use a computer service
  - "with the intent to kill, injure, harass, intimidate" to place the victim "in reasonable fear of ... death ... or serious bodily injury," or "cause[ ], attempt[ ] to cause, or ... be reasonably expected to cause substantial emotional distress."

*U.S. v. Fleury*, 20 F.4th 1353 (11th Cir. 2021)

*U.S. v. Ackell*, 907 F.3d 67 (1st Cir. 2018)

nt usage canon

canon

words canon

al avoidance canon

# Tex. Bar J. and Circuits Articles by Pierre



- "Access denied? Think twice before sharing your device's passcode," Texas Bar Journal, April 2022, p. 250. *United States v. Black*, 2021 WL 4953849 (A. Ct. Crim. App. Oct. 22, 2021). Also *People v. Davis*, 438 P.3d 266 (Colo. 2019).
- "A body-worn camera does not dispense the need for a warrant," Circuits, Feb. 2022, p. 32. *Commonwealth v. Yusuf*, 173 N.E.3d 378 (Mass. 2021).
- "Ubiquitous cameras make it ever harder to hide," Circuits, May 2022, p. 33. *United States v. Tuggle*, 4 F.4th 505 (7th Cir. 2021).
- "FAA drone regulation survives constitutional challenge," Circuits, Dec. 2022, *Brennan v. Dickson*, 45 F.4th 48 (D.C. Cir. 2022).
- "Capitol rioter's motion to suppress Facebook evidence denied," Dec. 2022, *United States v. Bledsoe*, Circuits, 2022 WL 3594628 (D.D.C. Aug. 22, 2022).
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- "Cyberstalker learns a hard lesson," Circuits, Sept. 2022, p. 8. *United States v. Yung*, 37 F.4th 70 (3rd Cir. 2022).

- Thank you!
- Mercí !