

# ***Search Warrants in the 21st Century***

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## **Basic warrant requirements.**

“[W]hat is required to obtain a warrant? Briefly put, the procedure requires the police officer to fill out an application that particularly describes what the authorities expect to find and where they expect to find it. Not only must this affidavit deal in specifics, but also it must set them out to the extent that a neutral and detached magistrate can independently determine if such information demonstrates that there is ‘probable cause’ to justify the issuing of the warrant. ... In executing a search pursuant to a warrant, law enforcement officers are limited to searching in areas where the items identified in the warrant might logically be found...” (Craig R. Ducat, *Constitutional Interpretation*, Vol.II. Wadsworth, 2004.)

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## **Five steps in drafting the warrant and affidavit.**

1. You must include facts establishing probable cause. For computers, three common strategies are:
  - a. Establish it through an Internet Protocol (IP) address.
  - b. Establish it through online account information.
  - c. Establish it through off-line conduct.
2. You must describe with particularity the things to be seized.
  - a. Information, or hardware?
  - b. Be specific and limited in your description.
3. You should establish the necessity for imaging and off-site examination.
4. You should not place limitations on the forensic techniques that may be used to search.
5. You may need multiple warrants in network searches.

## For Future Reading

Epstein, Lee and Thomas G. Walker. *Constitutional Law for a Changing America: Rights, Liberties, and Justice*. 8th edition. 2012. CQ Press.

Google. "Privacy Policy." June 30, 2015. <http://www.google.com/policies/privacy/>

Palazzolo, Joe. "Mass. Supreme Court: Defendant Must Decrypt Computers for Police." *The Wall Street Journal*. June 26, 2014. <http://blogs.wsj.com/law/2014/06/26/mass-supreme-court-defendant-must-decrypt-computers-for-police/>

*Riley v. California* (2014). Supreme Court of the United States.  
[http://www.supremecourt.gov/opinions/13pdf/13-132\\_8l9c.pdf](http://www.supremecourt.gov/opinions/13pdf/13-132_8l9c.pdf)

United States Government, Department of Justice. "Searching and Seizing Computers and Obtaining Electronic Evidence in Criminal Investigations." Computer Crime and Intellectual Property Section, Criminal Division. Published by the Office of Legal Education. 2009. <http://www.justice.gov/criminal/cybercrime/docs/ssmanual2009.pdf>

- See Appendix F, "Sample Premises Computer Search Warrant Affidavit" for an example of a search warrant for digital information.

Villasenor, John. "Encrypted Files, Child Pornography, and the Fifth Amendment." *Slate*. March 5, 2012.  
[http://www.slate.com/articles/technology/future\\_tense/2012/03/encrypted\\_files\\_child\\_pornography\\_and\\_the\\_fifth\\_amendment\\_.html](http://www.slate.com/articles/technology/future_tense/2012/03/encrypted_files_child_pornography_and_the_fifth_amendment_.html)