In the Supreme Court of the State of Georgia

COREY NELSON,	)	
Appellant,	)	Case No. S21A0773
	)	
versus	)	On appeal from the
	)	Cobb County
THE STATE OF GEORGIA,	)	Superior Court,
Appellee.	)	Case 18-9-0035.

AMICUS BRIEF OF LAW-LINGUISTICS RESEARCH TEAM IN SUPPORT OF NEITHER PARTY

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IDENTITY AND INTEREST OF *AMICI CURIAE*

Clark D. Cunningham is Professor of Law and the W. Lee Burge Chair in Law & Ethics at the Georgia State University College of Law. He is one of the nation's leading experts on the application of linguistics to the interpretation of legal texts.[1] He is currently teaching for the third time a research seminar at Georgia State on applying linguistic analysis to legal texts. He is the chair of the Association of American Law Schools Section on Law and Interpretation.

Amanda R. Black and Maria Kostromitina are PhD students in applied linguistics at Northern Arizona University. Megan Wells and Bradford Poston are

[1] *See* Resources on Law & Linguistics, www.clarkcunningham.org/Law-Linguistics.html; Original Meaning of The Constitution: Articles, Briefs and Presentations by Professor Clark D. Cunningham, www.clarkcunningham.org/OriginalMeaning.html.

upper-level students at the Georgia State University College of Law; they are currently enrolled in Professor Cunningham's research seminar and specifically chose to wrote their final papers on issues raised in this case. This brief is based on the research conducted for their seminar papers, which has been expanded and extended thanks to collaboration with Ms. Black and Ms. Kostromitina.

The above named will be collectively referred to as the law-linguistics research team ("research team" or "team").

This brief was entirely authored by *amici curiae*. No other party or their counsel played any role in its preparation, nor did any party or other person contribute money intended to fund the preparation and submission of this brief.

This *amicus* brief in support of neither party is being filed within 10 days after the brief of appellee was due, and therefore it may be filed without leave of the Court. Rule 23(a).

In granting the application for interlocutory appeal, this Court stated that it was "particularly concerned" with two questions: (1) when is a search warrant for the contents of an electronic device "executed" under the Fourth Amendment, and (2) was the execution of the search warrants for the contents of Nelson's electronic devices reasonable under the Fourth Amendment?

The authors of this amicus brief hope to assist the Court in addressing these questions by applying methods of linguistic science to the interpretation of

"executed" in OCGA § 17–5–25 (Execution of search warrants) and then analyze how the original public meaning of the Fourth Amendment might be applicable to the search of the contents of an electronic device, in this case a cell phone.

This Court has consistently held that a statute should be construed by giving its words "their plain and ordinary meaning"; the plain language of a statute is the best indication of the Legislature's intent in enacting the statute. O'Neal v. State, 288 Ga. 219, 702 S.E.2d 288, 290 (2010). Discerning ordinary meaning is perhaps even more important when interpreting the United States Constitution: "[t]he Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary as distinguished from technical meaning." District of Columbia v Heller, 554 U.S. 570, 576 (2008) (quoting United States v. Sprague, 282 U.S. 716, 731 (1931).

The Science of Linguistics Can Provide Evidence of Ordinary Meaning

The science of linguistics has made dramatic progress in the past thirty years due to developments in computer technology making it possible to acquire, store, and process large amounts of digitized data representing actual language use. Such a data set is called a corpus (plural: corpora). When properly executed, corpus linguistic research results meet the scientific standards of *generalizability*, *reliability*, and *validity*. Clark D. Cunningham & Jesse Egbert, Using Empirical Data to Investigate the Original Meaning of "Emolument" in the Constitution,

36 GA. ST. U. L. REV. 465, 473-75 (2020),

available at https://readingroom.law.gsu.edu/gsulr/vol36/iss5/6.

To meet the standard of *generalizability*, a corpus must be sufficiently large and varied so that it fairly represents the entire population to be studied: (1) writers using American English in the period 1950-1979 when investigating the ordinary meaning of "executed" in OCGA § 17-5-25, which was enacted in 1966; (2) writers using American English in the Founding Era when investigating the original public meaning of the Fourth Amendment.

Reliability is defined as the degree to which a method produces consistent results, allowing a different researcher applying the same method to duplicate the outcome. The use of computers to analyze corpus data provides reliability in the form of stable and consistent results that can be replicated. Thus, the research results presented in this brief can be replicated by anyone with access to the corpus data bases described below and the same analytic tools.[2]

Validity refers to how well a method measures results defined by a well-formed research question and how well those results reflect real world patterns. The research team aimed for validity by beginning with observations of systemic feature of real language use, seeking to discover patterns and develop theories from the

[2] The corpus web sites primarily used for this brief are fully accessible on the internet either for free or at a nominal cost. Most of the analytical tools used for this brief are also freely available on these corpus web sites.

ground up, with no preconceptions. At each step the team then developed hypotheses from these observations about the ways relevant words were used and understood that could then be subjected to empirical testing. These hypotheses were then applied to the questions of interpretation presented in this case.

Prior Linguistic Research on the Meanings of "Execute"

"*Execute and perform* – what satisfies one but not the other?" asked Justice Antonin Scalia and his co-author Bryan A. Garner in their treatise, Reading Law: The Interpretation of Legal Texts 177 (2012). By assuming that "execute" and "perform" had the same meaning in this provision commonly found in transactional documents, Scalia and Garner characterized this phrase as a purely stylistic "doublet" – like "indemnify and hold harmless" – that was an exception to the "Surplusage Canon" that every word in a legal text is to be given effect. *Id*. at 174-77.

Jesse A. Egbert, a professor of applied linguistics at Northern Arizona University, and his co-authors, Justice Thomas Rex Lee of the Utah Supreme Court and Zak Lutz, law clerk at the Utah Supreme Court, applied the methods of corpus linguistics to the question posed by Scalia and Garner and produced compelling evidence that "execute" and "perform" have very different meanings in this familiar phrase. Refining Corpus-based Methods for Investigating Questions of Surplusage (unpublished paper) (Sixth Annual Law and Corpus Linguistics Conference Feb 5,

2021) (on file with counsel for amici).

The Egbert team searched the Electronic Data Gathering, Analysis, and Retrieval (EDGAR) database, which contains legal filings required by the SEC, such as contracts, beneficial ownership reports, and company bylaws, for "execute and perform" within the last five years. They analyzed their search results against the definitions of "execute" in Black's Law Dictionary: a) "[t]o complete (a contract or duty)" and (b) "[t]o make (a legal document) valid by signing." They found that when the direct object was a document, form or instrument, "execute" was almost always the verb, not "perform," and that the phrase "execute and perform" was never used when a document, form or instrument was the direct object.

They did find this pattern when the phrase was used:

		Number of occurrences
execute and perform	the agreement	545
execute and perform	the obligations	128
execute and perform	the contract	42

The research results produced by the Egbert team suggest that when "execute" is applied to an agreement, contract or legal obligation, an ambiguity may exist as to whether "execute" means for example, to sign the agreement or to complete the agreement. The phrase resolves the ambiguity by adding the word "perform" to make clear that the agreement has been (or is to be) first signed and then completed.

Ordinary Meanings of "Executed" when OCGA § 17-5-25 was Enacted

OCGA § 17-5-25 was enacted in 1966. Therefore, amici began their research into the ordinary meaning of "executed" in OCGA § 17-5-25 by using the Corpus of Historical American English (COHA),[3] which allows retrieval of data by decade. COHA contains more than 475 million words of texts from the 1820s-2010s. The corpus is balanced by genre and decade and contains texts from a wide variety of sources including fiction, magazines, movies, news, nonfiction, and academic texts.

The team conducted a computerized search for every variation on the verb *execute*[4] (e.g. execute, executes, executing, executed) over three decades: 1950s, 1960s, 1970s. Table 1 provides an overview of the frequency of the verb for these decades.

Table 1. Frequency of '*Execute'* in COHA in the 1950s, 1960s, and 1970s

	1950s	**1960s**	**1970s**	**Total:**
execute	98	124	109	331
executes	9	13	12	34
executed	225	274	284	783
executing	40	44	37	121
Total:	372	455	442	**1269**

[3] https://www.english-corpora.org/coha/

[4] Italics are used to indicate a word in all its relevant variations; *execute* in this brief thus includes "execute," "executes," "executing" and "executed."

The team then manually examined all the instances of "executes" and "executing" and a randomized sample of 50% of the instances of "execute" and "executed."[5] The distinction drawn from Black's Law Dictionary used by the Egbert team between (a) to complete or (b) to make a document valid by signing was evaluated against the actual examples. The team found that some examples were readily categorized as "make valid by signing," but that "complete" did not seem to capture the full meaning of "execute" in those examples that did not refer to "signing." The following recurrent patterns were observed:

"planned and executed"
"conceived and executed"

Further examples were found that used similar verbs: designed, devised, decided, formulated, plotted, schemed, set up.

These frequent patterns suggested that "executed" did not mean merely "completed," but rather "carried out according to a previously specified course of action," as well illustrated by this statement: "the people made the decisions and the Government executed the decisions."

[5] Basing analysis on a randomized sample is a commonly accepted procedure in corpus linguistics. James Phillips & Jesse Egbert, Advancing Law and Corpus Linguistics: Importing Principles and Practices from Survey and Content Analysis Methodologies to Improve Corpus Design and Analysis. BYU Law Review, 2017(6), 1589. Available at: https://digitalcommons.law.byu.edu/lawreview/vol2017/iss6/12

The hypothesis was developed that "executed" was used in the 30-year period before and after enactment of OCGA § 17-5-25 in one of three ways:

- Put to death (X)
- Made a document legally enforceable by signing or affixing a seal (S)
- Carried out a previously specified course of action (C)

The two linguist members of the team returned to the same set of previously reviewed lines from COHA,[6] removed "put to death" uses, and applied the hypothesis to the remaining lines. They found that the hypothesis provided a meaningful way to categorize these lines, resulting in the following analysis:

	(C) carried out	(S) signed
Execute	94% (140)	6% (9)
Executes	100% (32)	0% (0)
Executing	96% (96)	4% (4)
Executed	96% (340)	4% (14)

The set of lines was then divided into two subsets; without knowing how the linguists had analyzed the lines, law student Wells independently reviewed one subset of 116 lines and Professor Cunningham independently reviewed a different subset of 187 lines. The degree of agreement between the linguists and Wells was

[6] All instances of executes and executing and 50% of instances using execute and executed.

89%; the linguists and Professor Cunningham agreed on 99% of the cases.

The team then investigated whether *execute* might be used differently in Georgia statutes than the ordinary meanings revealed by the COHA search from the era when OCGA § 17-5-25 was enacted. The team had access to a digitized version of the complete current Official Code of Georgia, consisting of over 28,000 texts, which was searched for all four verb forms of *execute*. A total of 1,041 instances of "executed" were found in the Georgia Code; 0 'executes'; 2 'executing'; and 566 of 'execute'. As with the COHA search, the team subsampled these lines: 20% of the occurrences of 'executed' and 'execute." (Both instances of 'executing' were reviewed.) Lines using *execute* as put to death were then excluded, yielding a total of 359 lines for review and analysis.

As for the lines found in COHA, the hypothesis was applied in a meaningful way to the Georgia Code sample. However, while *execute* (S) was quite rare in COHA (4%), *execute* as "sign a document" was the most frequent use in the Georgia Code sample:

	(C) carried out	(S) signed
Execute	33% (50)	67% (100)
Executes	0%	0%
Executing	50% (1)	50% (1)
Executed	21% (43)	79% (164)

The hypothesis about the meanings of *execute* was also tested by searching all instances of adverbs appearing either four words to the right or left of "execute" and "executed" in the Georgia Code corpus, yielding the following results:

Frequency	**Adverb**
4314	Duly
2322	Properly
789	Fully
609	Previously
599	Erroneously
500	Validly
189	Faithfully
146	Lawfully
54	Actually
35	Improperly
35	Imperfectly
32	Fraudulently
28	Partially
23	Completely
16	Illegally

The results showed a high frequency of adverbial modification evaluating the process of execution. The two most frequent adverbs (by far) seemed to measure execution against a specified course of action: "duly executed" and "properly executed." The occurrences of "partially executed," "actually executed," and "completely executed" indicate that execution was being evaluated as to whether the course of action had been completed.

Finally, the team turned its attention specifically to Article 2 (Searches with

Warrants) of Chapter 5 (Searches and Seizures), Georgia Code Title 17 (Criminal Procedure). Article 2 (Searches with Warrants) has fourteen sections (including OCGA § 17-5-25). *Execute* appears frequently in Article 2; 24 instances were found. In contrast to the predominance of *execute* (S) in the overall Georgia Code, *execute* in Article 2 never referred to "sign a document." Instead, throughout Article 2, the verb "issue" and the noun "issuance" are consistently used to describe the act of making a warrant legally enforceable by signature (of a judge or magistrate), as illustrated by the text of OCGA § 17-5-25 itself:

> The search warrant shall be executed within ten days from the time of issuance. … Any search warrant not executed within ten days from the time of issuance shall be void and shall be returned to the court of the judicial officer issuing the same as "not executed." (emphasis added)

The research team found a perfect fit between the hypothesis derived from evidence of ordinary meaning found in COHA -- that "executed" meant carried out a previously specified course of action when not referring signing or putting to death – and every use of *execute* in Article 2.[7]

[7] Because some provisions of Article 2 have been amended or added since 1966, not all the data from this small corpus is limited to the period of 1950-1979.

Distribution of the meanings of *execute*

	COHA	**GA Code**	**Article 2**
Signed	27/635 (4%)	265/359 (74%)	0/24 (0%)
Carried out	608/635 (96%)	94/359 (26%)	24/24 (100%)

OCGA § 17-5-23 makes clear that a warrant is an order directed to an officer to carry out the course of action specified in that section by "execut[ing] the same":

"The search warrant shall command the officer directed **to execute the same** to search the place or person particularly described in the warrant and to seize the instruments, articles, or things particularly described in the search warrant." (emphasis added)

The specified course of action, underlined above, closely tracks the Fourth Amendment requirement that "no Warrant shall issue … [unless] particularly describing the place to be searched, and the persons or things to be seized."

Other provisions of Article 2, when read together, indicate that execution of a warrant involves both an initial search and a subsequent seizure of "the instruments, articles, or things particularly described" in the warrant.

This provision from OCGA 17-5-21 authorizing a university police officer to execute a warrant beyond the officer's campus arrest jurisdiction makes clear that

conducting a search is a component of execution:

> "with respect to the execution of a search warrant by a certified peace officer employed by a university, college, or school, which search warrant will be executed beyond the arrest jurisdiction of a campus policeman pursuant to Code Section 20-3-72, the execution of such search warrant shall be made jointly by the certified peace officer employed by a university, college, or school and a certified peace officer of a law enforcement unit of the political subdivision **wherein the search will be conducted**." OCGA 17-5-21(d) (emphasis added)

However, the search for "the instruments, articles, or things particularly described" in the warrant is only preliminary to what OCGA §17-5-25 itself describes as the execution of the warrant: the seizure of "the instruments, articles, or things particularly described" in the warrant after a successful search:

> **§ 17-5-25. Execution of Search Warrants**
>
> "… If the warrant is executed, the duplicate copy shall be left with any person from whom any instruments, articles, or things are seized; or, if no person is available, the copy shall be left in a conspicuous place on the premises from which the instruments, articles, or things were seized. …" (emphasis added)

This provision indicates that a warrant is not executed until "the instruments, articles, or things particularly described" in the warrant have actually been seized, which is why the sentence begins, "If the warrant has been executed ..."

The expectation that execution of the warrant entails seizure of "the instruments, articles, or things particularly described" in the warrant also seems to underly this subsequent provision requiring an inventory of what the "officer executing the warrant" has seized.

§ 17-5-29. Return to court of things seized

"A written return of all instruments, articles, or things seized shall be made without unnecessary delay before the judicial officer named in the warrant or before any court of competent jurisdiction. An inventory of any instruments, articles, or things seized shall be filed with the return and signed under oath by the officer executing the warrant." (emphasis added)

Cell Phone Searches and the Fourth Amendment Protection Of "Papers"

The research team agrees with the analogy in the State's brief between the cell phone in this case and a box that law enforcement has probable cause to believe contains papers that would be evidence that a crime has been committed. Brief at 16. However, both the team's analysis above of the meaning of "executed" and the research results below about the meaning of search and seizure in relation to papers in the Fourth Amendment are inconsistent with the State's position that the warrant in the case was executed when the State seized (or continued to seize) the cell phone. The team's analysis also is inconsistent with Appellant's position that the warrant would have been executed by the act of imaging the data on the phone without further action being taken.

The warrant issued January 18, 2018 clearly stated the course of action to be taken in order for the warrant to be executed:

The list of certain property, items, articles, instruments to be searched for and seized are located in Cobb County, Georgia and are specifically described as follows:

Apple iPhone documented on PCR284756 for evidence of the criminal activity outlined herein, felony murder and aggravated assault, to include text messages, phone call logs,IP logs, Wi-Fi logs, photographs of victim and accused, video of victim and accused, marketing business documents, communication with other people leading up to and the day of the incident, any information about firearms and firearm accoutrements, maps, driving directions, and online chats and any other information related to this incident.

The foregoing described property, items, articles, instruments and person(s) to be searched for and seized constitute evidence connected with the foregoing listed crime(s) and is/are: (O.C.G.A. 17-5-21)

- ☑ designed for use in the commission of the crime(s) herein described.
- ☑ intended for use in the commission of the crime(s) herein described.
- ☑ has/have been used in the commission of the crime(s) herein described.
- ☐ stolen property; ☐ embezzled property;
- ☐ contraband, the possession of which is unlawful.
- ☑ tangible evidence of the commission of the crime(s) set forth above.
- ☐ a person who has been kidnapped in violation of the laws of this state or who has been kidnapped in another jurisdiction and is now concealed within this state.
- ☐ a human fetus; ☐ a human corpse.
- ☐ a person for whome an arrest/fugitive warrant has been issued. (Brown v. State, 240 Ga. App. 321
- ☑ other: digital information contained within device

You are hereby commanded to immediately search the above described premises/person(s), for the above list of specifically described person(s), property, items, articles, instruments and making the search at any time of the day or night and if any of the above-listed person(s), property, items, articles, and instruments can be found to seize them. You shall leave a copy of this warrant and a receipt listing any person(s), property, items, articles, and instruments seized. A written inventory, signed under oath by the officer executing this search warrant ,

listing the person(s), property, items, articles, and instruments seized shall be prepared without unnecessary delay and shall be returned to me or to any judicial officer of this court. (O.C.G.A. 17-5-29)

The officer(s) executing the warrant were commanded to search for "evidence connected with the crime" by searching the specified iPhone for such evidence in the form of text message, phone call logs, online chats, and other digital information believed to be "contained within the device."

The course of action specified by this warrant is directly analogous to how

Americans in the Founding Era applied the words "search" and "seizure" in reference to papers. Indeed the famous John Wilkes search warrant case[8] in the Founding Era specifically involved the following steps:

1) King George III requested issuance of a warrant to find out who had authored and/or published a pamphlet that he considered to be seditious libel and specifically authorized the seizure of papers.
2) Agents executing the warrant entered the house of John Wilkes and conducted a search for papers that would show Wilkes was the author of the pamphlet.
3) The agents encountered a locked cabinet that they suspected contained the kind of papers they were looking for.
4) The King's Secretary of State was consulted and he instructed the agents to engage a locksmith to break open the box.
5) Papers were found within the box and the agents took all the papers, including "a pocket-book of Mr. Wilkes", put them all in a sack and delivered them to the Secretary of State.
6) When Wilkes asked for return of his papers, the Secretary of State wrote

[8] *See* Clark D. Cunningham, Apple and the American Revolution: Remembering Why We Have the Fourth Amendment, 126 YALE LAW JOURNAL FORUM 218, 221-224, 226 (2016), available at https://www.yalelawjournal.org/forum/apple-and-the-american-revolution-remembering-why-we-have-the-fourth-amendment-1

> back that "such of your papers as do not lead to your guilt, shall be restored to you. Such as are necessary for that purpose it was our duty to turn over to those who office it is to collect the evidence and manage the prosecution against you."

As illustrated by the Wilkes case, persons in the Founding Era understood that there was an important difference between searching for papers and subsequently searching papers after they were seized.

In the Wilkes case, the agents did not know if the locked cabinet contained the incriminating documents that the King's warrant had commanded them to find. The warrant was not executed until the locksmith opened the cabinet and then officials serving the Secretary of State subsequently examined the papers transferred to the sack and delivered to them. To apply the State's analogy, the officer charged with executing the warrant in this case had done nothing more than seize a locked box within the 10 days after the warrant was issued. He did not even know if the cell phone contained any of the evidence of a crime that he was commanded to search for. The cell phone itself was not searched until its digital contents were "read" over a year later, at which point only data found to be evidence of the crime could lawfully be seized under the warrant.

The research team's linguistic analysis of the original public meaning of the

Fourth Amendment in the Founding Era begins by addressing a possible reading of the State's position: that there is no difference between seizing a cell phone and searching it.

***Search* and *Seizure* were Closely Related but Distinct Terms**

The Corpus of Founding Era American English (COFEA) contains 126,394 documents and 136,860,326 words written by Americans in the time period starting with the reign of King George III in 1760 and ending with the death of George Washington in 1799.[9] The texts from this corpus cover a wide range of written material: e.g. letters, diaries, newspapers, non-fiction books, fiction, speeches, debates, court decisions, and statutes. The majority of the texts come from the following sources: The National Archive Founders Online; William S. Hein & Co., HeinOnline; Text Creation Partnership (TCP) Evans Bibliography (University of Michigan); Elliot's Debates; Farrand's Records; and the U.S. Statutes-at-Large from the first five Congresses. Clark D. Cunningham & Jesse Egbert, Using Empirical Data to Investigate the Original Meaning of "Emolument" in the Constitution**,** 36 Georgia State Law Review 465, 474-75 (2020)**,** available at https://readingroom.law.gsu.edu/gsulr/vol36/iss5/6.

The first use of COFEA was to investigate whether "search" and "seizure"

[99] Corpus of Founding Era American English available at https://lawcorpus.byu.edu/ .

were used synonymously in the Founding Era. The methodology searched for all examples in COFEA where variations on the word "search" (e.g. search, searches, searched, searching – hereinafter *search*) appeared within four words to the left or right of variations of the word "seize" (e.g. seize, seized, seizing, seizure – hereinafter *seize*) and vice versa. The COFEA software provides a Mutual Information Score, a Z-Score which shows the degree of relatedness between the words and a Log Likelihood showing how likely it is that the co-occurrence is not random. All three measures showed that *search* and *seize* frequently occurred near each other in non-random ways:

***search* w/in 4 words of**	**Z-SCORE**	**LOG LIKELIHOOD**	**MI Score**
Seizeing	67.6632	15.1334	9.1612
Seizures	273.9866	482.8098	8.0274
Seizure	116.9816	365.1027	5.5386
Seize	107.342	418.1607	4.9800
Seiz	13.9508	14.4441	3.6338
Seizing	24.0419	43.2178	3.6195
Seized	38.2264	151.6893	2.9743

seize w/in 4 words of	Z-SCORE	LOG LIKELIHOOD	MI Score
Searches	202.6015	439.675	7.1576
Searchers	88.4232	114.1798	6.6145
Search	119.1401	717.6853	4.3676
Searched	35.442	77.2777	3.9956
Searching	20.7541	44.3883	2.9891

The high likelihood that *search* and *seize* would occur in the same context is a strong indication that the words had related but different meanings in the Founding Era.

Search Found to have Special Meanings in Relation to Papers

The team next analyzed the entire COFEA data base for uses of *search* and *seize* that appeared to be associated with "paper or papers" (*paper*).[10] Fifty instances were found using *search* with reference to *paper*. In nine cases *search* was used as a noun; in the other 41 instances it was used as a verb. There were approximately twice as many instances of *seize*: 102 cases, most of which presented *seize* as a verb.

The team found a number of cases indicating that *seizing* was only a first step,

[10] The analysis retrieved every case where *paper* appeared within four words to the left or four words to the right of *search* or *seize*.

followed by reading the papers that had been seized.

In two consecutive letters written by Thomas Digges to Benjamin Franklin, the writer used the phrase "seized and examined" in reference to papers:

> "Sept. 4, 1779 … Capt Hutchins was taken up last Sunday at a fr[ien]ds[']house n[ea]r Leatherhead, his papers all seiz[e]d [and] has had three or four close examinations as to accomplices. … Since these examinations others have been taken up & their papers seiz[e]d & examin[e]d, particularly a Miss Stafford, and a Clerk of Mr Neaves who it is said lately came from Paris." To Benjamin Franklin from Thomas Digges, 4 September 1779," 30 Papers of Benjamin Franklin 290-93 (Barbara B. Oberg ed. 1993), available at https://founders.archives.gov/documents/Franklin/01-30-02-0231. (emphasis added)

> "Sept. 6, 1779 … Mr. Peisley (who is generally suspected to have turn[e]d informer) has been discharge[e]d on condition of appearing an Evidence ag[ains]t. him [Captain Hutchins], and Mr. Bundy yet remains a prisoner. As the papers of these three mention[e]d other names, some other people have been taken up, their papers seizd and examind. &c. Mr. Neaves books & papers have undergone this fate" To Benjamin Franklin from Thomas Digges, 6 September 1779," 30 Papers of Benjamin Franklin 301-305 (Barbara B. Oberg ed. 1993), available at https://founders.archives.gov/documents/Franklin/01-30-02-0239 (emphasis added).

The team further noted that Digges apparently used "have been examined" interchangeably with "have been searched" in reference to "papers" in the first letter to Franklin.

> … all others have been taken up & their papers seiz[e]d & examin[e]d, particularly a Miss Stafford, and a Clerk of Mr Neaves who it is said lately came from Paris; all Neaves[']books and papers have been search[e]d, & they seem to be going onto the seizure of all papers of Persons who appear by the above correspondencies to have any connexion or intercourse with the

partys, so that every person may suffer whose names have been imprudently used. Two friends of S W in Wimpole and Marybon street may have their papers search[e]d, from meerly having their names (I mean the former) imprudently mention[e]d in these correspondencies".

Other examples that expressed seizing a paper as only a first step used "peruse" rather than "examine" to describe the next step.

"He eagerly seized the paper, and retiring into an adjoining chamber, he perused its contents with increased amazement and agitation."

"I seized the paper with an intention to peruse it."

As the team examined lines like these examples using *search* in relation to papers, they developed the hypothesis that *search* had two different meanings, which the team categorized as:

- Looking for specific papers (P)
- Looking for information (I)

The (P) meaning was much more common when *search* was used as a noun, and was also more common when *search* was used as a verb.

Table _

The Meanings of Search + Papers

	Search* (noun) + *Paper	***Search* (verb) + *Paper***
Looking for specific papers	8/9 (89%)	24/41 (59%)
Looking for information	1/9 (11%)	17/41(41%)

When *search* was followed by "for," the meaning was likely to be (P), indicating that the immediate object of the search was a physical paper or set of papers, as illustrated by this correspondence from the Washington archives:

> "[To George Washington] August 23d 1784 … an occasion has occur'd which obliges me to request that you'l be so good to look into my Deeds and over all my Papers (if they remain in your hands) for the Lord Proprietor[']s discharge, for all arrears of Quit rents which He gave me. …. The importance of this small Scrip of paper will I trust plead my excuse for the trouble I am necessitated to give when I inform you that Mr G. Nicholas writes me that a demand has been made … for the arrears of Quit rents of all the Lands myself and Family hold" From George William Fairfax to George Washington, 3 The Papers of George Washington, Confederation Series, 51-55 (William Wright Abbot ed. 1994), available at https://founders.archives.gov/documents/Washington/04-02-02-0050 (emphasis added).

> "[From George Washington] 30th June 1785 … I proceeded to a diligent search for the paper requested in your favor of the 23d of August last year, & after examining every bundle, & indeed despairing of success, it occurred to me that your Acco[un]t with Lord Fairfax might afford some clue by which a discovery of it might be made; & in looking in your ledger for an index, I found the receipts pasted on the cover of the Book." From George Washington to George William Fairfax, 3 The Papers of George Washington, Confederation Series, 87-92 (William Wright Abbot ed. 1994), Available at https://founders.archives.gov/documents/Washington/04-03-02-0080 (emphasis added).

However, "*search papers*" could also mean reading or examining a paper or papers looking for information, as illustrated in the letters to Franklin quoted above and in this letter to George Washington in response to his request for genealogical information about his family:

> "I search'd over every old paper in my possession, but cou'd find nothing that cou'd give any information relative to the subject required, further than the Will of Laurence Washington …. I found the Will of Mrs Warner … but as that did not relate to the family … I shall not inclose it." To George Washington from Hannah Fairfax Washington, 9 April 1792, 10 The Papers of George Washington, Presidential Series 240-42 (Robert F. Haggard & Mark A. Mastromarino eds. 2002), available at https://founders.archives.gov/documents/Washington/05-10-02-0139 (emphasis added)

The case of John Wilkes shows that, because *search* could mean both search (P) and search (I), a warrant could authorize a search (P) for papers that leads to seizure of papers and then a subsequent search (I) of the seized papers. The same sequence is described in this account of impeachment proceedings against Senator William Blount:

> "The committee … received … a trunk belonging to William Blount, containing a number of papers, which had been seized in pursuance of a resolution of the Senate, authorizing its committee to send for persons and papers. From these papers a selection had been made by the committee of the Senate; and the House, having made a further selection of such as appeared to them to be connected with the object of their appointment, returned the residue to the order of William Blount." Annals of the Congress of the United States 1st Congress, 1st Session.

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In the Supreme Court of the State of Georgia

COREY NELSON, *Appellant*,	)	Case No. S21A0773
versus	)	On appeal from the Cobb County Superior
THE STATE OF GEORGIA, Court, *Appellee*.	)	Case 18-9-0035.

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of April 2021, a true copy of this Amicus Brief in support of neither party was sent by U.S. mail with proper postage paid and addressed to:

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