

# What Does It Mean to “Search a Cell Phone”?

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[Big Data Meets the Constitution in New Originalism Project](#)

Georgia appellate judges evaluate cutting-edge inquiries into what the Constitution's framers meant from Georgia State University law students.  
Meredith Hobbs, Daily Report, May 1, 2018

**"This is revolutionary,"** said Georgia Appeals Court Chief Judge Stephen Dillard. **"It's like Westlaw for originalism."**



[Students Present New Insights on Original Meaning of Constitution to Judges using "Big Data"](#)

[of Corpus Linguistics](#)  
GSU College of Law News, May 21, 2018

**"I thought the students were all exceptionally well prepared, the writing was very strong, the research was very strong, and it's grappling with some of the most difficult questions that courts have to deal with today."** Justice Nels Peterson, Supreme Court of Georgia



# Linguistic Analysis of Legal Texts Georgia State University College of Law

Linguistic  
Analysis of Legal  
Texts  
Georgia State  
University  
College of Law

- Clark D. Cunningham  
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Web Site Address:  
<http://www.clarkcunningham.org/JP/index.htm>
- **Research Projects: Fall 2021**  
Student Presentations (webcast)
- **Research Projects: Spring 2021**  
Student Presentations (webcast)
- **Research Projects: Spring 2018**  
Student Presentations (webcast)

# How Students Found Nelson Case

From Spring 2021 syllabus:

- Possible Paper Topics

Cases pending before Supreme Court of Georgia <https://www.gasupreme.us/>

This case not yet docketed, waiting for Cobb Superior Court to forward the record

- Corey Nelson v. The State (murder case) – opportunities to interpret both a Georgia statute and 4<sup>th</sup> amendment
- when is search warrant for contents of an electronic device “executed” under the 4<sup>th</sup> amendment
- was execution of search warrant “reasonable” under 4<sup>th</sup> amendment
- [Supreme Court order granting appeal](#)
- [Trial court docket \(Cobb County\)](#) (Search criminal cases by name “Corey Nelson”)

# Student Presentations

- <http://www.clarkcunningham.org/JP/Presentations-21S.html>
- **Presented Wednesday, April 14, 2021 Via Zoom**  
[Webcast Link - All Five Presentations](#)
- **5:00 Session**  
[Audrey Fleissig](#), District Judge, United States District Court, Eastern District of Missouri  
[G. Richard Bevan](#), Chief Justice, Idaho Supreme Court  
[Tammy Gales](#), Associate Professor of Comparative Literature, Languages, and Linguistics, Hofstra University

## **Presentations:**

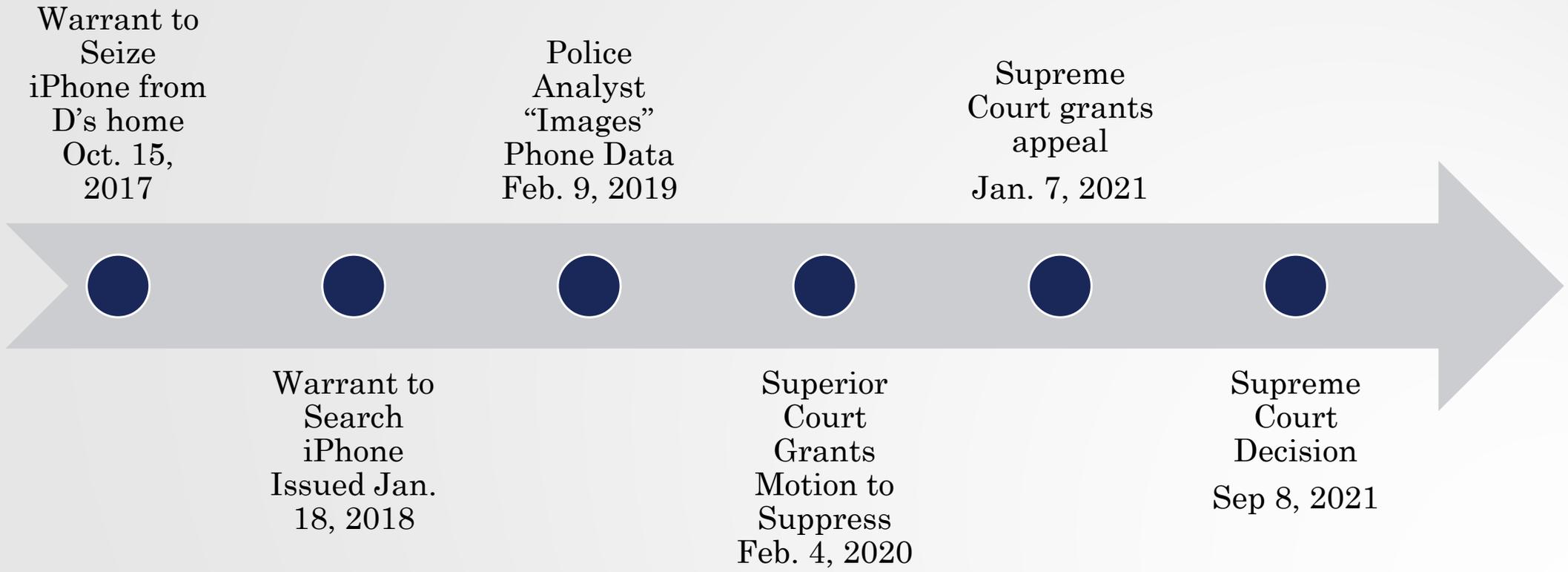
5:20: Clark Cunningham presenting for Bradford Poston, General Searches and Electronic Evidence: The Original Meaning of “Executed” In Georgia’s Time Limited Search Warrant Statute --- collaborating with Amanda Black and Maria Kostromitina, PhD students in Applied Linguistics, Northern Arizona University

5:40: Megan Wells, When Is a Warrant Executed Based on the Meaning of “Search” In Regard to Papers? -- collaborating with Amanda Black and Maria Kostromitina, PhD students in Applied Linguistics, Northern Arizona University

# Official Code of Georgia § 17-5-25

A “search warrant shall be **executed** within ten days from the time of issuance” and “[a]ny 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.’”

# State v. Nelson



# What prosecutor said to trial judge

- “Detective Stoddard executed the search warrant by submitting the evidence for forensic evidence within the ten-day period proscribed by law, and the evidence should not be excluded because of a backlog or delay in the actual testing.”
  - State’s Brief in Opposition to Defendant’s Motions to Suppress, Jan. 29, 2020

# Trial judge's decision

- “This court does not find that the examination of the data and analysis of the devices needs to be completed within ten days,
- but rather that the electronic data should be downloaded, extracted or mirror-imaged within ten days of the issuance of the search warrant.
- In this case, neither was done.”
  - Order Granting Defendant's Motion to Suppress Evidence Obtained from the Search Warrant for Electronic Devices, Feb. 4, 2020

# Georgia Supreme Court Order

- Order Granting Appeal (Jan. 7, 2021)
- "The Court is particularly concerned with the following:
- When is a search warrant for the contents of an electronic device 'executed' under the Fourth Amendment to the United States Constitution?"

# The Corpora

## COHA

- 475 million words of text from the 1820s-2010s
- Balanced by genre decade by decade

## COCA

- The Corpus of Contemporary American English (COCA) is the only large, genre-balanced corpus of American English
- The corpus contains more than one billion words of text by decade from eight genres

## COFEA

- General written American English from the founding era of the United States of America (i.e., 1765-1799).
- 119,801 texts from three sources for a total of 133,488,113 words.

## GA Code

- A subsection from the *US Code Corpus* (Wood & Egbert, 2020)
- Includes the 2019 version of the Georgia State Code in its entirety
- 28,221 texts

# *Execut*\* in COHA

- All the instances of “executes” and “executing” and a randomized sample of 50% of the instances of “execute” and “executed” were retrieved
  - (a) to complete or
  - (b) to make a document valid by signing was evaluated against the actual examples.
- These frequent patterns suggested that “executed” did not mean merely “completed,”
- Revised coding scheme

Table 1. Frequency of ‘Execute’ in COHA in the 1950s, 1960s, and 1970s

	<u>1950s</u>	<u>1960s</u>	<u>1970s</u>	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

# Revised Coding Scheme

## (1) Put to death

- E.g. "the men were tried, convicted and executed"

## (2) Sign - make a document legally enforceable by signing or affixing a seal

- GA statute uses "issue" to describe signing a warrant

## (3) Carrying out a previously specified course of action

- E.g., "See that my orders are **executed!** The fierceness of the Colonel's command rocked the sergeant."
- E.g., "the people made the decisions, and the Government **executed** the decisions"

were issued scores of contracts by the Syndicate... and the business at hand was **executed** with neatness and finesse. A word from the S  
the train from Baltimore. But Lepke's contract for The Bug had already been **executed**. Red Alpert. His trademark. First The Bug, now Al  
that way. Yes. Now, you testified previously that you also designed and **executed** this. Yes. " Blueprint for Spring. " And it's a real  
by the simplest method. If it was discovered in time, the inventor was **executed** summarily, along with anyone else who knew the secret  
the chest -- no fingerprints. " The men were tried, convicted, and **executed**. The Chinese government sent us abject apologies. The doub  
clearing. There they paused. It was a return to ballet, a gravely **executed** change in the proportions of the tableau. They stood, a droope  
however, to alter in the slightest degree her role of hostess, which she **executed** with such grace and charm that the bishop easily exten  
He wondered: Am I guilty of pity? " See that my orders are **executed**! " The fierceness of the Colonel's command rocked the sergeant. " A

# Concordance Line Examples

**Table 2. Senses of *execute* in COHA**

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

# COHA Coded Instances

**Table 3. Senses of *execute* in GA Code**

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

# GA Code Coded Instances

# Adverbial Modification of *execute* in all of Georgia Code

\*Execution was being  
evaluated as to how well  
activity had been carried  
out according to  
previously specified  
course of action

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*

Georgia Code:  
Title 17 - Criminal Procedure  
Chapter 5 - Searches and  
Seizures

Article 2 - Searches With  
Warrants

E.g., 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)

**Table 5. Distribution of the meanings of execute**

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

# State's Brief to Supreme Court

Change in strategy

Instead of arguing that warrant was executed when detective submitted request for forensic analysis

Now arguing that warrant was executed simply by seizing the iPhone

“A search warrant is executed for the contents within an electronic device when the law enforcement officer seizes, or already has legal possession of, any electronic device containing the electronic data pursuant to that search warrant.”

When a search warrant is executed in relation to a cell phone, what is the specified course of action to be carried out?

# Further research after filing the *amicus* brief: Frequency of Adverbial Modification Evaluating the Process of Execution in More Generalized Corpora

## COHA

			1950s	1960s	1970s	1980s
1	FAITHFULLY EXECUTED	11	1	1	7	2
2	FAITHFULLY EXECUTE	10	2	3	2	3
3	BRILLIANTLY EXECUTED	10	5	1	1	3
4	SUMMARILY EXECUTED	10	3	1	3	3
5	BEAUTIFULLY EXECUTED	9	1	2	4	2
6	LATER EXECUTED	9	2	2	4	1
7	WELL EXECUTED	7	2		2	3
8	DULY EXECUTED	6	2	2	1	1
9	THEN EXECUTED	5			2	3
10	PROPERLY EXECUTED	4	2		1	1

## COCA

1	WELL EXECUTED	148
2	POORLY EXECUTED	128
3	FAITHFULLY EXECUTE	126
4	FAITHFULLY EXECUTED	102
5	PERFECTLY EXECUTED	89
6	SUMMARILY EXECUTED	67
7	THEN EXECUTED	63
8	THEN EXECUTE	62
9	PROPERLY EXECUTED	61
10	BEAUTIFULLY EXECUTED	60

# Constitutional Interpretation

The Fourth Amendment specifically mentions “papers”:

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“The right of the people to be secure in their persons, houses, *papers*, and effects, against unreasonable searches and seizures, shall not be violated.”

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Assuming that a right to “be secure in papers” applies to digital correspondence, we investigated the use of *search* and *seize* in COFEA.

## The 4th Amendment

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

# COFEA Results

- *Search* was checked in COFEA in all instances near *Seized*
  - Ninety texts were found
  - All 90 cases examined for same or different objects
  - 16 instances had the same object
- Three of these 16 had “papers” as the direct object of both *search* and *seize*:
  - (1) Orders were given to search & seize his *papers*
  - (2) warrants ... for searching and seizing men’s *papers*
  - (3) seizing and searching the *papers* of members of Parliament

Our hypothesis: the Founding Era distinction between seizing papers and searching papers can be applied to the execution of a cell phone search warrant



# Searched & Seized

- The Nelson case illustrates a typical sequence leading to the government’s discovery of information stored on a cell phone.
- In the initial search warrant, the “place to be searched” was Nelson’s home and the “things to be seized” were “cell phones, computers and other electronic communication devices.”
- The government then secured a second search warrant for which the “place to be searched” was an iPhone seized pursuant to the initial warrant and the “things to be seized” were “evidence of the criminal activity”



# Conclusions

- We 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.
- Merely seizing the cell phone in Nelson was not execution of a warrant to search the cell phone for evidence in digital form.

# Nelson v. The State

## What happened in the Georgia Supreme Court?

- <http://www.clarkcunningham.org/L2-Briefs.html>
- [--Order Granting Appeal](#) (Jan. 7, 2021) ("The Court is particularly concerned with the following: When is a search warrant for the contents of an electronic device 'executed' under the Fourth Amendment to the United States Constitution?")
- [--Amicus Brief of Law-Linguistics Research Team in Support of Neither Party, Corey Nelson v State of Georgia, Supreme Court of Georgia](#) (filed April 19, 2021)
- [--Order for Oral Argument](#) (Apr. 29, 2021) ("following appellant's opening argument, the Court will then immediately hear from neutral amicus counsel who shall have 10 minutes to argue")
- [--Oral Argument](#) (Aug. 26, 2021), <https://www.gasupreme.us/oral-arguments-august-26-2021/>
  - [--- Transcript of Oral Argument by the State](#)
  - [--Slides for amicus oral argument](#)
- [Supreme Court Decision](#) (Sep. 8, 2021)

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Thank you!