

A federal magistrate judge in Kansas released an important opinion late last month that has received some attention (and praise) among groups that worry about the ever-increasing powers of federal law enforcement authorities to snoop into the sensitive electronic information of criminal suspects. Judge David Waxse made news when he denied a federal search warrant request, saying that the warrant was overly broad and unreasonable.

The case concerned a warrant request by authorities that were seeking to collect a host of electronic information from several individuals they suspected of stealing \$5,000 in computer equipment from Sprint. To help crack the case, prosecutors said they needed permission from Waxse to force an array of technology companies to hand over data on the suspects. These companies included GoDaddy, Verizon, Google, Skype and Yahoo. Authorities argued that they needed access to the suspects' emails, instant message transcripts, chat logs and search histories.

Judge Waxse wasted little time in sharply rejecting the warrant request, saying that the warrant lacked particularity and was unreasonably sweeping. Judge Waxse compared the warrant request to asking the post office to turn over every piece of mail that had ever come or gone from a particular house. The vast majority of the information collected would have nothing to do with the alleged crime, allowing law enforcement authorities to go on a fishing expedition through suspects' incredibly sensitive digital information.

In his opinion, Waxse wrote that if police officers were looking for a stolen lawn mower that they believe was located in a person's garage, they would not be allowed to get a search warrant that includes that person's upstairs bedroom. The request to sweep up such a broad array of digital information is exactly the same in that it allows law enforcement officers the chance to stumble upon potentially incriminating evidence outside the scope of their initial investigation.

Waxse wrote that the Fourth Amendment's particularity requirement exists precisely to prevent such general, exploratory searches from taking place. Waxse suggested that in the future, authorities should draw specific limits on the communications they wish to rifle through. He mentioned that limiting the request to certain keyword searches might be one way to draw appropriate boundaries.

The case is seen as an important one given that Judge Waxse has developed a reputation as an expert on how the law relates to modern technology. The case has received attention because it attempts to draw limitations on the government's power to search and seize electronic information, an important and largely undefined area of criminal law. Experts say that the case reveals just how much work remains to be done in terms of creating a legal framework for what kinds of data law enforcement officials ought to be able to access when investigating a case.

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