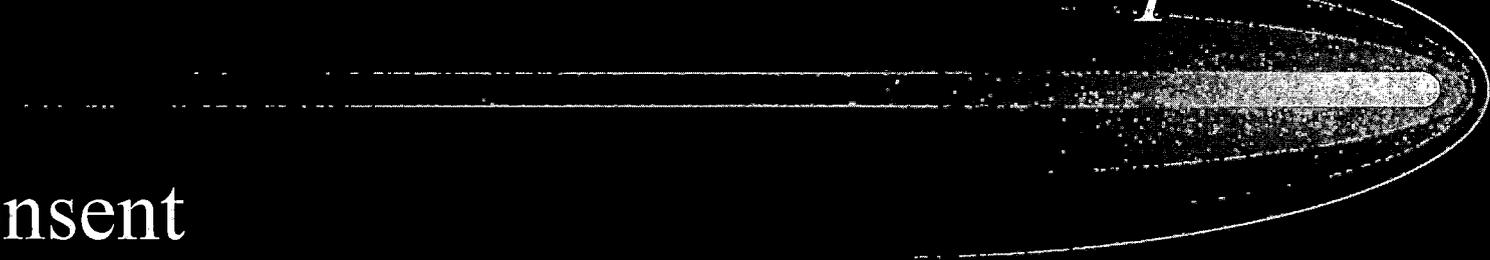


Riley v. California
United States v. Wurie

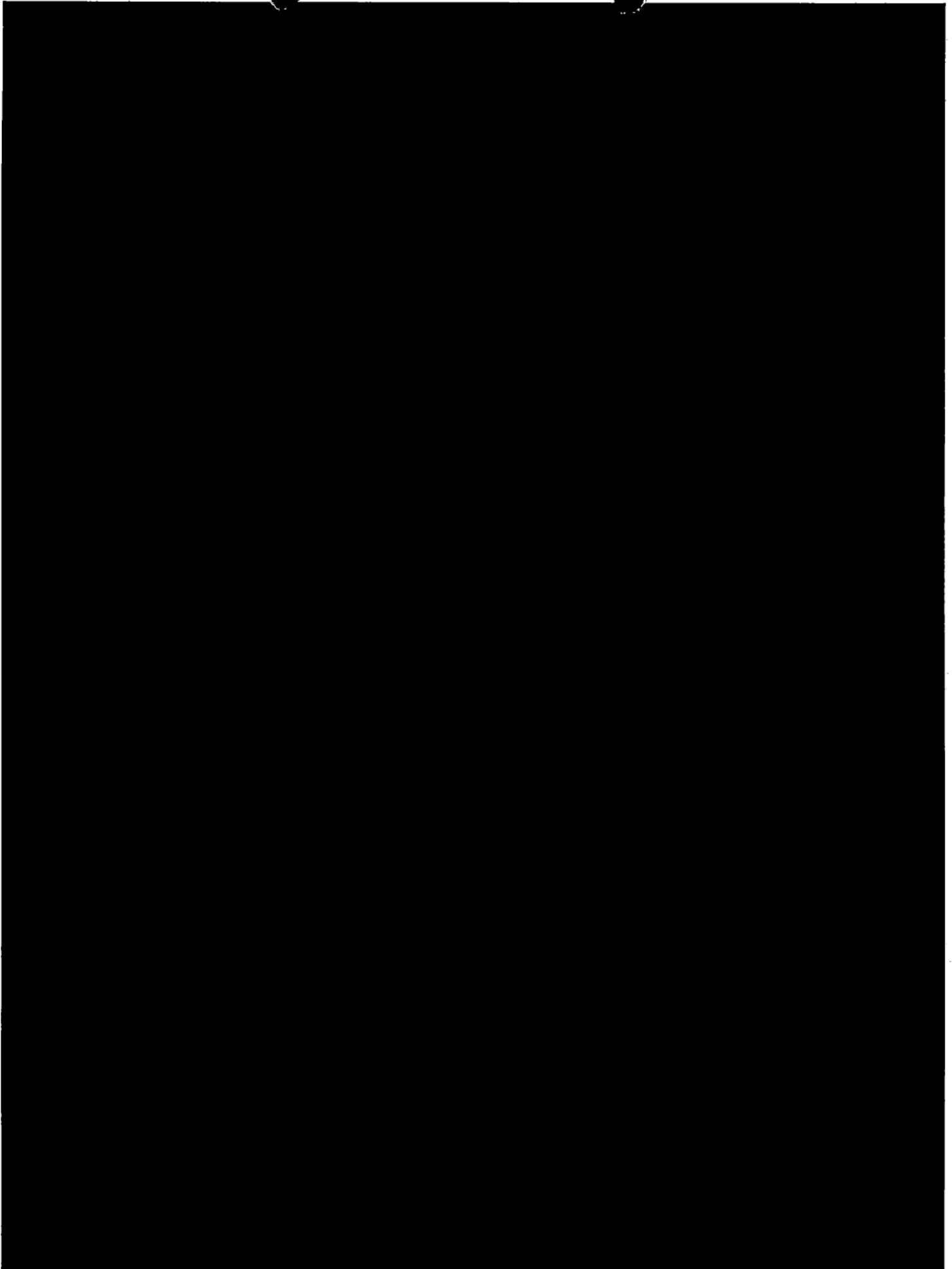
- Courts recognized smartphones contain vast quantities of personal information.
- Police must generally secure a search warrant before conducting a search of a cell phone.

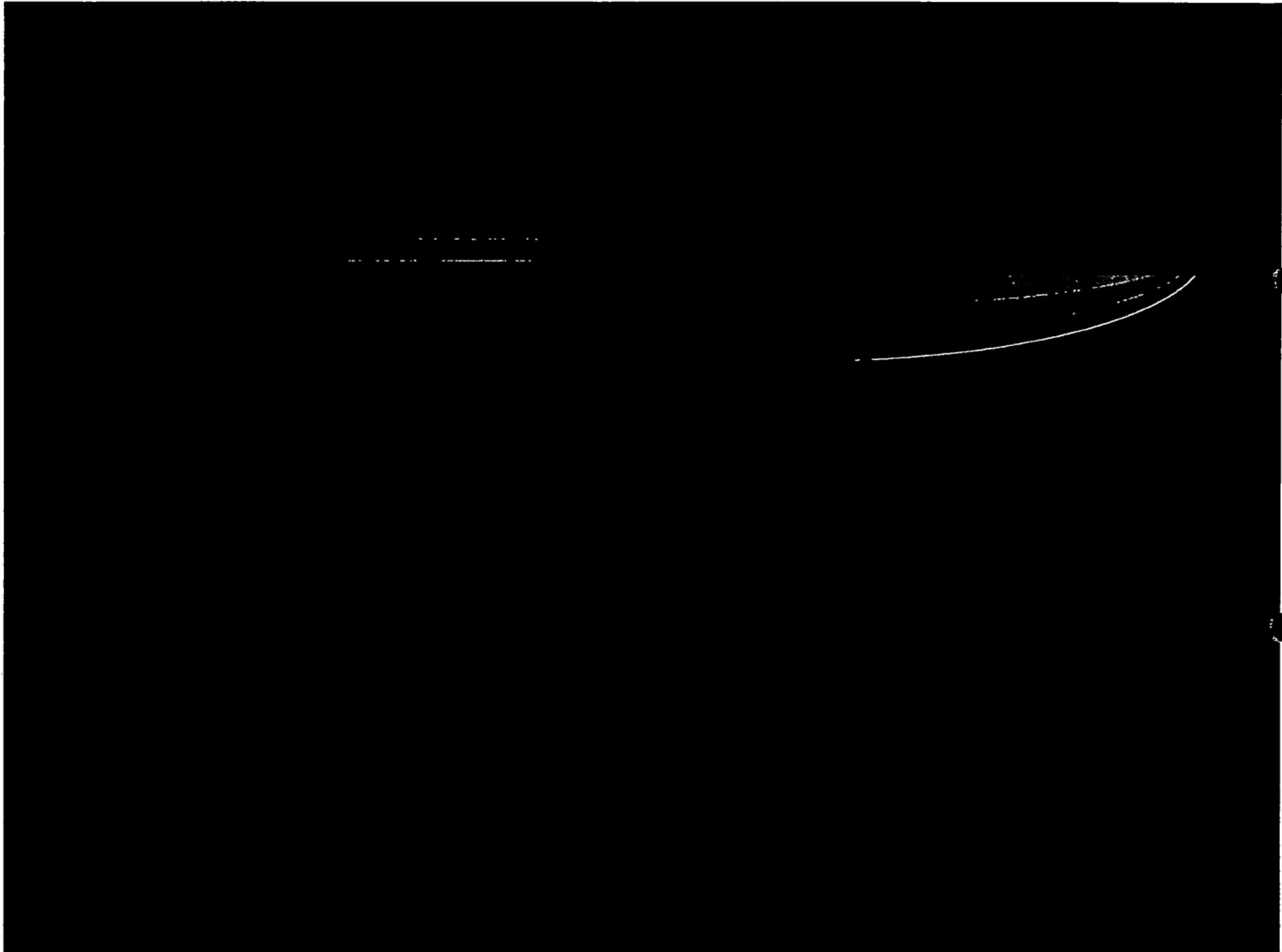
Exceptions



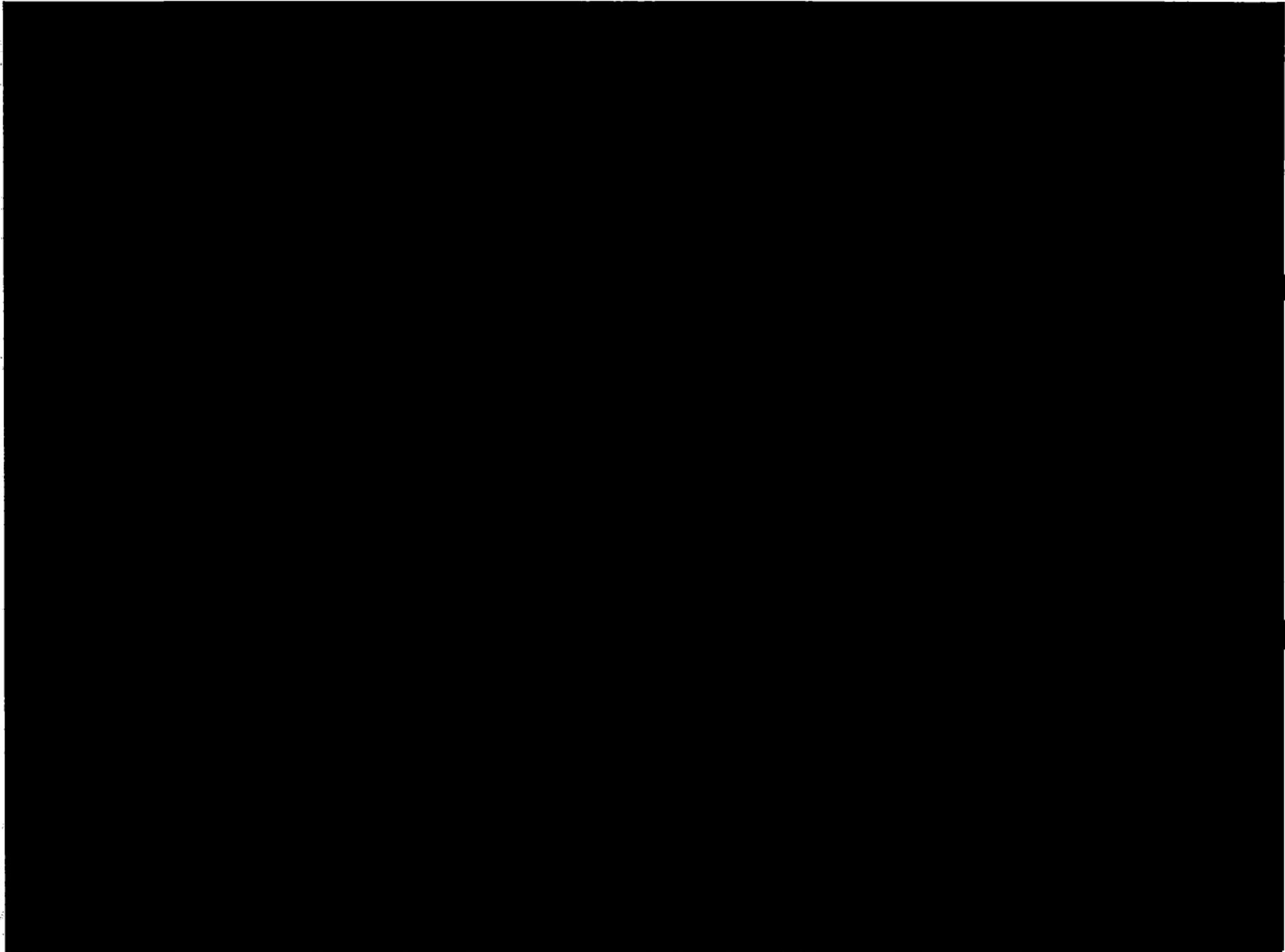
- Consent
- Open to search & seizure (Probation/Parole)
 - Needs to be specific in their Probation terms
- Plain View
- Exigent Circumstances – Life & Death
- Incident to arrest (does not apply to electronic communication devices)





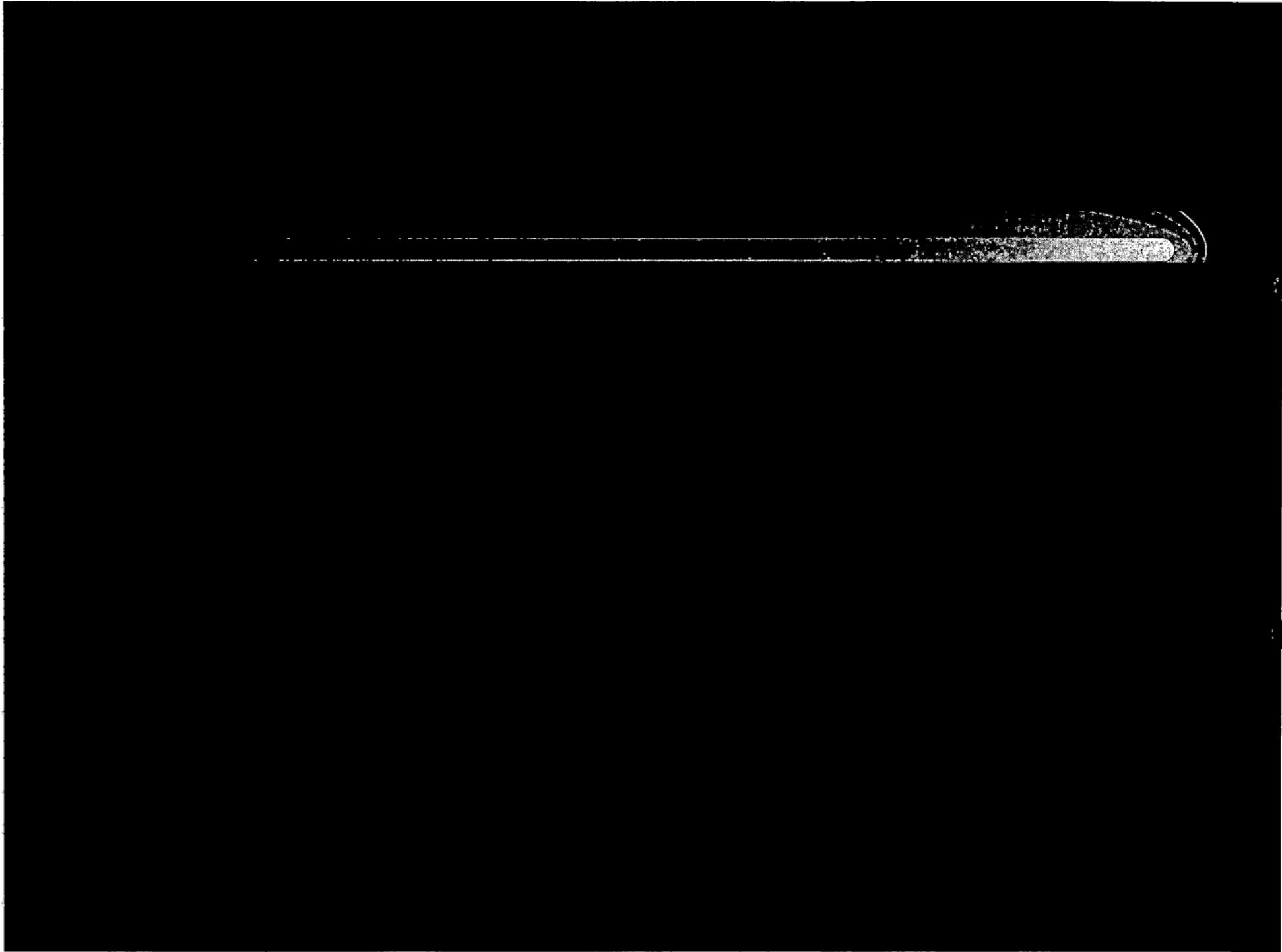


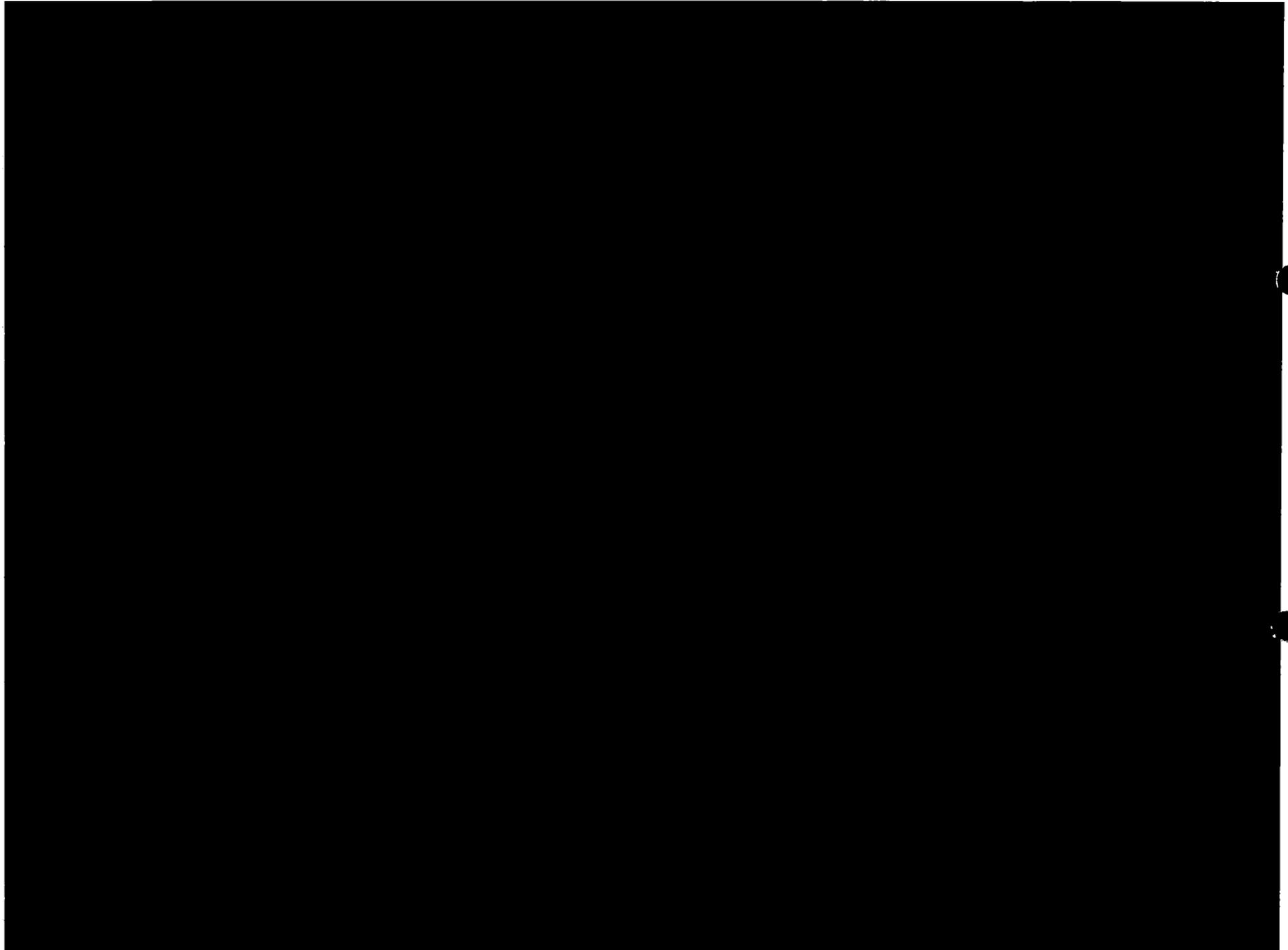


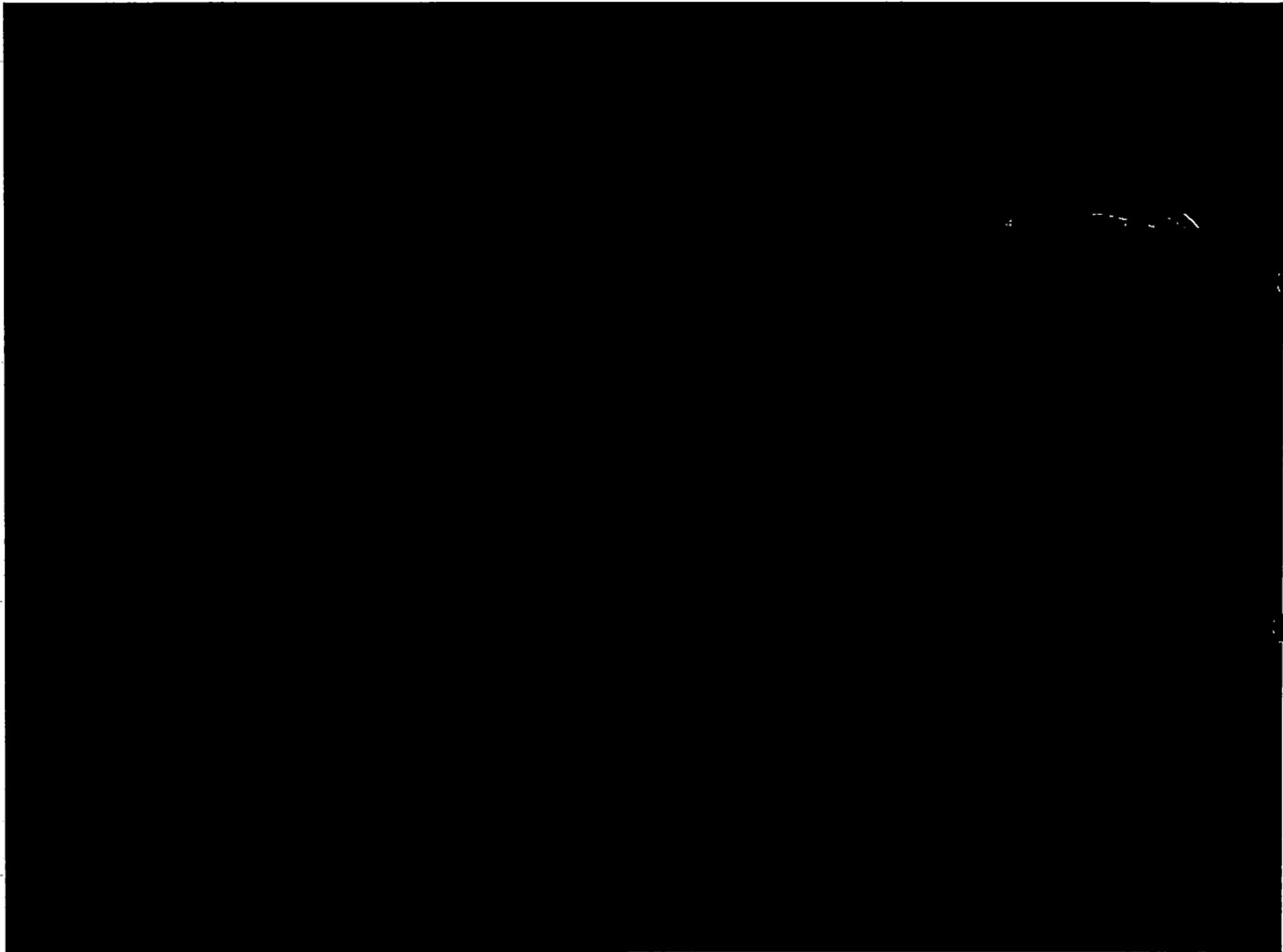


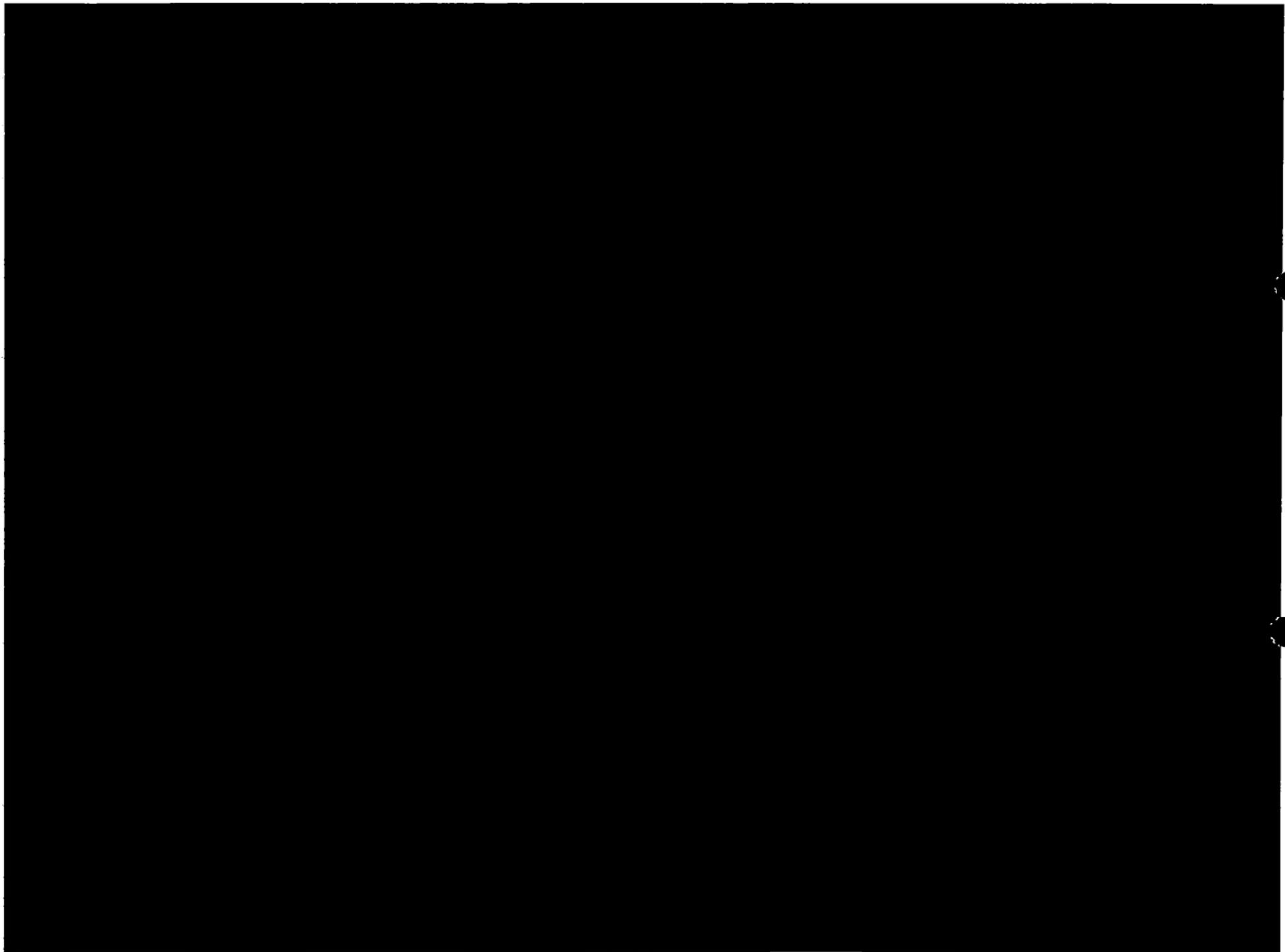


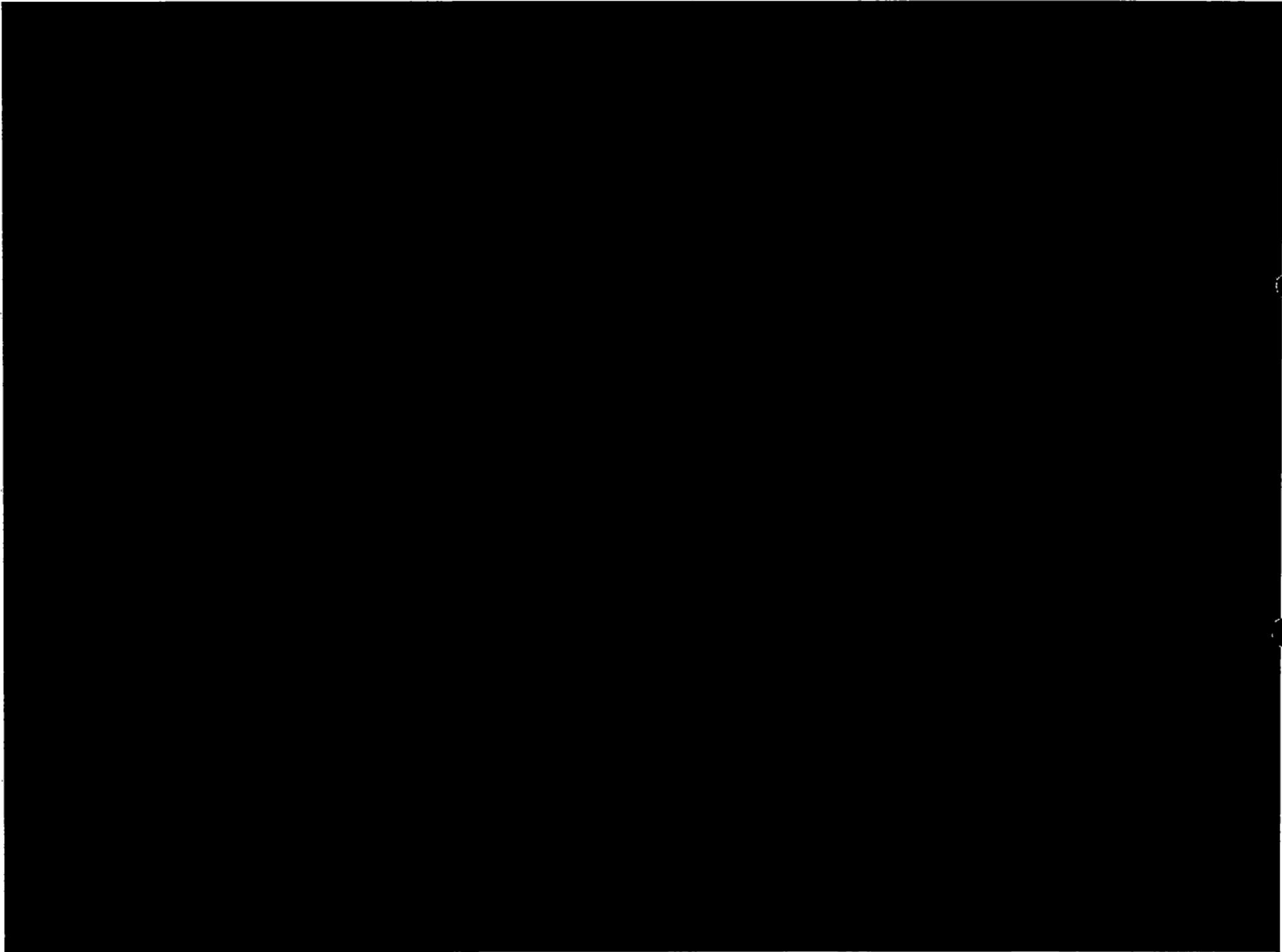












California Electronic Communication Privacy Act

- Senate Bill 178
 - CAL-EPCA
- Signed by Governor Brown (2015)
- Effective January 1, 2016

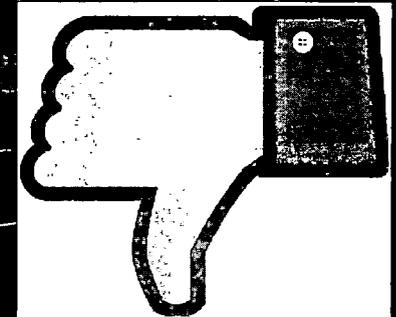


Overview of CAL-ECPA



- Search Warrant – required for
 - Electronic Communication Information
 - Device’s Information
- Warrant Format
 - new requirements for warrant targeting electronic information
- Provide Notice
 - Any warrant that targets Electronic Communication or Device Information
- Suppression is a remedy

CAL ECPA – The Shall Not



- Government entities shall not:
 - **Compel** the production of or access to:
 - Electronic Communication Information from
 - Electronic Communication Service Provider. 1546.1(a)(1)
 - Electronic Device Information from
 - any person/entity **other than the authorized possessor of the device**. 1546.1(a)(2)
 - **Access**:
 - Electronic Device Information by means of physical or electronic interaction with the device. 1546.1(a)(3)

CAL ECPA – You May

- May **compel** the production of or access electronic communication information from a service provider, or compel the production of or access to electronic device information from any person/entity other than the authorized possessor... 1524.1(b)
- **Only** under the following circumstances:
 - **Warrant** issued pursuant to 1523 et.seq. 1546.1(b)(1)
 - **Wiretap** issued pursuant to 629.50 et.seq. 1546.1(b)(2)
 - **Order** for electronic reader records issued pursuant to Section 1798.90 of the Civil Code. 1546.1(b)(3)
 - **Non-criminal Subpoena** for the production of specified records not to be sought for investigating/prosecuting a criminal offense. 1546.1(b)(4)
 - **There is no emergency 911 exception (SB 1121)**
 - **There is no consent exception**

CAL ECPA – You May

- May access Electronic Device Information by means of physical interaction or electronic communication with the device: 1546.1(c)
 - Cellebrite
 - Pinging ...
- only under the following circumstances:
 - **Warrant** - issued pursuant to 1523 et. Seq. 1546.1(c)(1)
 - **Wiretap** - issued pursuant to 629.50 et. Seq. 1546.1(c)(2)
 - **Specific consent**
 - of the authorized possessor of the device. 1546.1(c)(3)
 - of the owner of the device, only when the device has been reported as lost or stolen. 1546.1(c)(4)
 - **Emergency** – based upon good faith belief involving danger to any person of 1546.1(c)(5)
 - death or
 - serious physical injury
 - Destruction of evidence is not an emergency
 - Notice must be given in writing (1546.2(a))
 - Delay in notice may be requested, assuming court approval
 - **Lost/Stolen/Abandoned**
 - Based upon good faith, belief - the entity shall only access electronic device information in order to attempt to identify, verify, or contact the owner or authorized possessor of the device. 1546.1(c)(6)
 - **Inmate Devices 1546.1(7)**
 - if the device is seized from an inmate's possession
 - found in an area under jurisdiction of a CDCR facility where inmates have access and the device is not known/believed to be the possession of an authorized visitor.

Form of the Warrant

“any warrant for electronic information”

- Shall Comply with... 1546.1(d)
 - Describe with particularity 1546.1(d)(1)
 - the information to be seized
 - specifying the time periods covered and,
 - the target individuals/accounts,
 - the applications or services covered, and the
 - types of information sought.
 - A COURT **Shall** Require: 1546.1(d)(2) (SB 1121)
 - **Seal Unrelated Information** – court shall require unrelated information be sealed and not subject to further review, use, or disclosure without a court order.
 - **Unsealing Order** based upon **Probable Cause** - to believe that the information is relevant to an active investigation, or review, use, or disclosure is required by state or federal law.
 - Require Service Provider to Verify Authenticity of Records produced and the court shall order affidavit be provided in compliance with Evidence Code-1561
- 1546.1(d)(3)

