Funding!

This project is supported by grants by the Bureau of Justice Assistance, US DOJ, and by Mississippi State University.

Points of view or opinions in this training session and the binders are those of the authors and do not represent the official position of the United States Department of Justice.
Examination of Important Criminal Law Issues

Cybercrime

Search & Seizure

Conferences
judicial
prosecution
police training

Projects

Publications

NCJRL.org
Cyber Crime Initiative

Link w/ national organizations, state-wide agencies to develop model projects to facilitate prosecution of persons engaged in computer-related crime.
Prosecution Training

partner: National Association of Attorneys General

only national training program to help combat computer-related crime for AG Offices from all 50 states

- held 18 conferences to date
- 2 planned in 2009
Fourth Amendment Initiative

Promotes awareness of search and seizure principles

**National Judicial College**
Specialized training for trial and appellate judges.

**Annual Conferences**
Address important search and seizure issues, published in the *Mississippi Law Journal*.

**James Otis Lecture**
Annual lecture by noted scholar.

**Computer Searches and Seizures**
Judicial and prosecutor training w/ NAAG and *Mississippi State University*

Publications at [www.NCJRL.org](http://www.NCJRL.org)
Prosecution Externship Program

- Model program and prepares law students for careers as prosecutors.

Criminal Appeals Program

- Model program and training on appellate advocacy in criminal appeals cases.
Comprehensive Search and Seizure for Trial Judges

OXFORD -- Sept 21-24, 2009
Reno -- May 18-21, 2009

Computer Searches and Seizures for Trial Judges

OXFORD, MS -- Aug 20-21, 2009
-- Nov 3-4, 2009

Computer Searches and Seizures for Police Officers

OXFORD, MS -- May 14-15, 2009
-- Sept 1-2, 2009
Publications / Projects

Model Cyber Crime Guide

Computer Searches and Seizure Symposium

Supervising Child Pornographers

Online Cyber Crime Newsletter

Internet Chat CD Rom

Mississippi Cyber Crime Unit

Internet Victimization Symposium

New Projects - innovative training materials and standardized approaches to computer-related crime
Annual Fourth Amendment Symposiums

2002: Technology
2003: Race & Ethnicity
2004: "Tools" to Interpret
2005: Computer Searches and Seizures
2006: Role of Objective vs. Subjective Intent
2007: Independent State Grounds
2008: Border Searches -- digital and physical
2009: "Great Dissents"
the crime scene
3 ways digital evidence involved in crimes

computer is either

*Container*

*Tool*

*Target*
new crimes & new techniques

1. *contains* evidence

   * drug dealers' records
   * who lives there, owns computer

2. *tool to commit crime*

   * e Bay fraud (on-line auction house fraud)
   * illegal trading of music, movies
   * hacker
   * illegal Internet gambling business
   * identify theft
just a murder!

- studied currents
- researched bodies of water
- how to make cement anchors
- tide charts

had 5 home computers
3. computer as *Target*

* unauthorized access, damage, theft
* spam, viruses, worms
* denial of service attacks

Technology-specific crimes that did not exist before there were networks
Computer Searches and Seizures

- Introduction to digital evidence, computer Forensics
- Selected Fourth Amendment applicability issues
"inside the box, outside the box"
Selected applicability issues
(inside the box)

1. Reasonable expectations of privacy

2. Private Searches
   - who is a government agent
   - replicating private searches
   - context of discovery as destroying REP
Computer Searches and Seizures

- Is the Amendment satisfied?
  - two main approaches to digital evidence
  - warrant issuance requirements
  - probable cause issues
  - particularity issues
  - search strategies

conceptual difficulties of applying traditional doctrines to digital evidence
Computer Searches and Seizures

more on satisfaction

- Search execution issues
- plain view
- search incident arrest, inventory, probable cause based vehicle searches
- consent

some specialized issues

- Child Pornography
- outside the box: the Internet, Networks, New Technologies
- Electronic Exchange of Documents
fourth amendment framework

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.
IN EVERY CASE, ....

1. Does the 4th Apply?
   
   A. gov't activity: "Search" or "Seizure"
   B. Protected interest: liberty, possession, privacy

2. Is it Satisfied?

   "Reasonable"
   Warrant Clause requirements

[3. Remedies?]
## Applicability Detailed

<table>
<thead>
<tr>
<th>Objects Protected</th>
<th>&quot;Security&quot; of Each Object Implicated</th>
</tr>
</thead>
</table>
| People            | by "search":
|                   | REP analysis                        |
|                   | by "seizure":
|                   | liberty                             |
| Houses            | REP ""                              |
|                   | possession                          |
| Papers            | REP ""                              |
|                   | possession                          |
| Effects           | REP ""                              |
|                   | possession                          |
**Expectation of Privacy Analysis**

**In General**

**Search**: must have legitimate expectation of privacy invaded by gov't

**two prongs**

1. individual has subjective expectation of privacy
2. society recognizes that expectation as reasonable

*If either prong missing, no protected interest*
**Reasonable expectations:** two prongs --

1) actual EP
2) society recognizes EP as legitimate

**reduced expectations:**

apply gov't friendly reasonableness analysis

**no REP:**

amendment does not apply as to search
**Hierarchy of Privacy Analysis Example: Vehicles**

- **Reasonable expectations** → no one has full REP
- **Reduced expectations** → driver/owners -- have reduced REP
  - therefore **Reasonable model changes**: no warrant for probable cause based searches
  - **Car thief** (Rakas)
  - **Renter after lease expires** (some courts)
  - **Passengers** (Rakas -- as to glove box, under search)

**TH: no standing**
Federal vs. State guarantees

States are free to interpret **OWN constitution** as providing more protections to individuals

* increasing trend: PA, CT, OR, ..... 

* contra CA, FL, ... prohibited from doing so
"All times are Estimates"
Publications / Lectures

Upcoming Events Calendar

Cyber Crime Newsletter

Thomas K. Clancy

662-915-6918

tclancy@olemiss.edu

www.NCJRL.org
who are you?