

**Computer Searches and Seizures** with CP emphasis



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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.

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**Fourth Amendment Initiative**

Promotes awareness of search and seizure principles

- Conferences for state judges
- Computer Searches and Seizures
- Annual Symposium / published lectures

publications at [www.NCJRL.org](http://www.NCJRL.org)

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## Annual Fourth Amendment Symposiums

all at [WWW.NCJRL.org](http://WWW.NCJRL.org)

- 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"
- 2010: Fourth Amendment Rights of Children
- 2011: The Future of the Fourth Amendment
- 2012 (2013): William Rehnquist's Fourth Amendment



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## Cyber Crime and Digital Evidence Publications / Projects

*lots* on line at [www.NCJRL.org](http://www.NCJRL.org)

*including:*

- Internet Victimization Symposium
- Materials on computer-related crime

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## 4 day search and seizure course

Comprehensive Search and Seizure for Judges

next May .....



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ICAC courses: materials on line



- **Suvery: Internet Crimes Against Children**
- **Internet Child Pornography**
- **Trial Issues in ICAC cases**
- **Pretrial Motions Practice**

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Recorded WEBINARS on Internet Technology.....

- **Web Browsing 101**
- **Hiding Tracks on the Web**
- **Interactive Media**
- **Mobile Devices**
- **Peer-to-Peer Technologies**
- **Emerging Uses/Cutting Edge Technologies**
- **Etc .....**

recorded/ live at **NCJRL.org**

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Next Live WEBINAR on Internet Technology.....

October 18, 2013  
2:00 PM Central time

**Webinar – Uses of mobile devices**

at **NCJRL.org**

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just a murder!

studied currents

researched bodies of water

how to make cement anchors

tide charts



had 5 home computers

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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*

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Fourth 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.

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Federal vs. State guarantees

States free to interpret OWN constitution to provide more protections to individuals

■ increasing trend

■ *Symposium, 77 Miss. L.J. 1 (2007)*  
lots of info on developments ....

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lots of developing issues

applying established rules to digital evidence containers??



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published search and seizure appellate ct. decisions

**298 total**  
**203 Child Porn**

**68 %**

green - total cases

yellow - Child Porn

	STATE		FEDERAL	
2010	24	(13)	23	(17)
2009	13	(10)	17	(16)
2008	13	(10)	17	(13)
2007	9	(5)	14	(9)
2006	17	(9)	14	(8)
2005	13	(8)	20	(15)
2004	14	(11)	6	(4)
2003	7	(6)	6	(6)
Pre-2003	31	(19)	40	(24)
<b>total</b>	<b>141</b>	<b>(91)</b>	<b>157</b>	<b>(112)</b>

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**structure of 4th Amendment analysis**

IN EVERY CASE, .... see memo in binder

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?]

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*"inside the box, outside the box"*

**Outside the box**

**The Box**

topics include:

- internet investigations
- statutory protections:
  - \*stored communications act
  - \*wiretap act
  - \*pen register / trap and trace

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**obtaining evidence**

Sender (AOL)

AOL Server Temporary Storage

Google Server Temporary Storage

Recipient (Gmail)

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applicability issues inside the box

when does person have REP in data in computer?

case law has examined variety of situations:

1. person's own computer
  - info on screen
  - data in computer
2. work and gov't computers
  - monitoring and other policies that affect REP
  - who has access to computer?

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uncertain F/A applicability outside the box

non-consensual interception of communications, etc,  
over the Internet to another party

example: email

*possible analogies:*

its like a letter in the mail

its like numbers dialed on a telephone

its like any info possessed by third party

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statutory protections tend to supercede --  
outside the box

Congress /states have enacted some statutory  
regulation of computer network investigations:

- Stored Communications Act
- Wiretap Act
- Pen Register / Trap and Trace

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conference agenda

- introduction to digital evidence & computer forensics
- Reasonable expectations of privacy
- Is the Amendment satisfied?
  - two main approaches to digital evidence, including plain view doctrine and search protocols
- tracking technologies & legal framework
  - Beepers, GPS, Cell Sites

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conference agenda

- outside the box: into to technology !
  - Internet, Networks, New Technologies
- legal framework "outside the box"
- typical steps in digital investigation
- Fourth Amendment and Regulatory Framework regulating outside the box investigations
- Common search and seizure issues in Child Pornography cases

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**in tab #1**

- structure of Fourth Amendment analysis
- overview of obtaining digital evidence

➤adapted from 2d edition of The Fourth Amendment: Its History and Interpretation (fall 2013)

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**Additional reading**

➤The Fourth Amendment Aspects of Computer Searches and Seizures: A Perspective and a Primer, 75 Miss. L.J. 193 (2005).

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all Power points and materials available at:  
**WWW. NCJRL.org**

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**"All times are Estimates"**



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