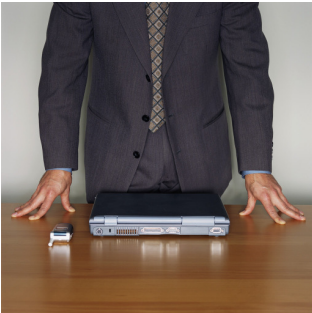


SEARCHING YOUR LAPTOP'S CONTENTS AT THE BORDER DOES NOT REQUIRE PROBABLE CAUSE OR REASONABLE SUSPICION...THEY CAN JUST DO IT.



IN A PUBLISHED OPINION IN 2008 THE NINTH DISTRICT COURT OF APPEALS (FOR THE WESTERN STATES) RULED THAT BORDER GUARDS HAVE THE RIGHT TO SEARCH ANY LAPTOP SOUGHT TO BE BROUGHT INTO THE COUNTRY AT THEIR FULL DISCRETION...AND ARREST THE OWNER IF CHILD PORNOGRAPHY OR OTHER ILLEGAL MATERIAL IS ON IT. THE FOURTH AMENDMENT RIGHT AGAINST UNREASONABLE SEARCHES AND SEIZURES DOES NOT PROTECT THE TRAVELER. U.S. v Arnold, 08 C.D.O.S. 4533.

THE FACTS:

Michael Arnold, 43 years of age, was pulled aside at the Los Angeles International Airport, arriving from the Philippines on July 17, 2005. Customs agents obtained and examined the contents of his laptop computer. They found... "numerous images depicting what the agents believed to be **child pornography.**" That is a crime in the United States. See our article on the subject on this web site.

A federal grand jury later charged Arnold with possessing and transporting child porn and with traveling to a foreign country with the intention of having sex with children. Arnold's attorney claimed the evidence should be suppressed under the Fourth Amendment restriction on unreasonable searches and seizures.

THE LAW:

In the trial court, U.S. District Judge Dean Pregerson of Los Angeles District Court suppressed the evidence after finding that customs agents violated Arnold's Fourth

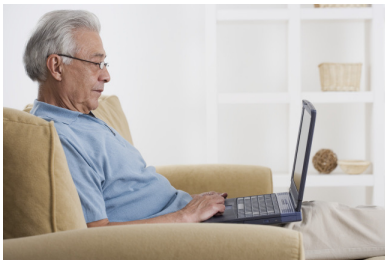
Amendment right against unreasonable searches and seizures. The Judge held that the agents did not have reasonable suspicion to search the contents of Arnold's laptop.

But the Ninth circuit Court of Appeals reversed that decision and allowed the evidence in. In reversing, the Ninth Circuit ruled that Pregerson erred in holding that a "particularized suspicion" was necessary. The court also rejected the claim that the border agents had exceeded their authority by conducting a search in a "particularly offensive manner."

"We are satisfied that reasonable suspicion is not needed for customs officials to search a laptop or other personal electronic storage devices at the border... (Defendant) has failed to distinguish how the search of his laptop and its electronic contents is logically any different from the suspicionless border searches of travelers' luggage that the Supreme Court and we have allowed."

Put simply, for any or no reason, your laptop is subject to full and complete invasion by the government agents any time you cross any border into the United States. Period.

The matter may be appealed to the United States Supreme Court but most scholars agree that this will remain the law for the foreseeable future.



THOUGHTS:

The attorney for Arnold was deeply upset and says the case has been widely followed by the press, "...because laptops are so much a part of our lives and the level of intrusion allowed into what we keep stored in our laptops is extraordinary." She stated that she could understand that customs agents need to turn on a laptop computer to make sure it's not a bomb or a container full of illegal substances. But opening all files on the computer concerned her. "What this decision allows border agents to do without limits is keep opening up and reading forever."

The U.S. Attorney responded, "The government needs to have the ability to restrict harmful material from entering the country, whether that be weapons used by terrorists, dangerous narcotics or child pornography."

Most Americans unconsciously expect limits on government intrusion in their lives and treasure the right to be "left alone." However, the law is increasingly clear that in unusual situations or in certain areas, your rights are eliminated and the traveler is well advised to

realize that there are NO fourth amendment protections against searches when one reenters the country and that remains the law at this time. Or, as one wag put it, "You leave your rights behind when you walk up to the customs agent with your luggage in your hands."

The statement is a bit extreme...but substantially accurate. Be prepared.

