7: The Fourth Amendment (Stand-Alone Computers)

- Administrative
  - Next Time: 332-372
    - 7 fewer pages.
  - Papers
  - The New Blog
  - News?
    - HP indictments
    - ITP's "Fall Challenge"
    - Ritter Beauprez and files from past criminal case.
- Recap Lab Class
- Finishing Topics from Week 5
  - Special Skill Enhancement
    - Section 3B1.3
      - App Note 3: "skill not possessed by members of the general public and usually requiring substantial education, training or licensing."
        - E.g., pilots, lawyers, doctors, accountants, chemists, demolition experts.
      - US v. Lee
      - Student Comments
        - Josh seems not to favor it at all.
        - Desmonne really tries to understand the rationale
          - Is it because you've let society down because they somehow trust the trained professions?
          - Is it deterrence?
            - Maybe they need additional deterrence because they can so easily evade detection?
          - Is it because skilled people cause greater harm?
        - Tracy: Really fair to punish someone based on their level of education?
          - Really interesting thoughts on punishing people for white-collar vs. blue-collar criminals?
  - Conditions of Probation
  - Finally
    - Tracy's really interesting thoughts on the socioeconomic impact of these sentencing schemes
- Searching Without a Warrant
  - Brief intro to the Fourth Amendment
    - Text of Amendment
    - Only for Searches and Seizures
      - Search: Reasonable Expectation of Privacy
    - Reasonableness
      - Valid Warrant
      - Exceptions
        - Search incident to arrest.
        - Plain View
        - Consent
        - Border Search
        - Inventory Searches
    - Warrants
      - Probable Cause
      - Particularity
    - Remedy for Violations
      - Suppression
  - State Action / Private Searches
    - Jarrett
      - Basic Facts
        - Steiger (predecessor case) also a published opinion.
        - Turkish (?) hacker seeds popular CP newsgroup with image and trojan horse
          - What is a TH?
          - Notice: is he guilty of distribution of CP? (fn5)
        - Breaks into PCs infected with the trojan horse and looks for information identifying the computer user.
        - Many FBI/Police communications with him
          - Pre-Search of Jarrett
            - 11/20: Duffy (Turkey Leg-Att) tries to talk.
            - 12/20: Duffy thanks him for his assistance and says "if you want to bring other information forward, I'm available"
            - May, 01: Duffy e-mails again; assurance of no prosecution (re: Steiger)
            - 12/01: Hacker reveals Jarrett.
            - 12/13/01: Search warrant executed; Jarrett arrested.
          - Post-Search
            - 12/16/01: Duffy e-mails thanking him for help in STEIGER case (didn't know about Jarrett?)
              - Hacker responds: What about Jarrett? What about his arrest?
            - 12/19/01: Thanks him for assistance and info about investigation.
            - Also 12/19/01: Agent Faulkner (FBI, original Steiger case): "Proverbial 'wink and nod'" on 254.
            - Next four months: four more e-mail messages.
              - If you find more, send them to us.
              - You're not a target.
              - Never advised he should stop hacking.
      - Held
      - Reasoning
        - Justin: Encouragement is not Request
    - Note 2: Do private searches create a greater privacy threat with computers?
    - Note 4: Scope of re-enactment.
      - Barth (W.D. Tex 1998)
        - Can only search what they searched.
        - Desmonne votes for this.
      - Emerson (N.Y. Sup. Ct. 2003)
        - Files in same folders were within the scope of the prior search.
      - Runyan (5th 2001)
        - Looked through same disks -- fine.
        - But searching disks she hadn't searched -- exceeded the scope.
  - The container question
    - What is the "container" over which you have an REP with your computer?
      - Comes up under scope of private search cases.
      - Comes up under scope of consent cases.
      - Comes up under third-party consent cases.
  - Meaning of "Search"
    - Test: Person's reasonable expectation of privacy.
    - For computers: Usually seen as closed containers.
    - David
      - Basic Facts
        - Detained by US Customs on suspicion of heroin trafficking.
        - Series of meetings during plea bargaining.
        - David used "Computer memo book" to look up info during these meeting.
        - Had to enter a password to access data.
        - Agent Peterson did three things
          - 1. "Shoulder surfed" David's password.
          - 2. Grabbed book from him when he thought David was deleting files.
          - 3. Used PW to review some data (in David's presence?)
      - Held
      - Reasoning
  - Consent
    - Basic Doctrine set out in S&S Manual Excerpt
    - Scope of search
    - Withdrawn consent
    - Third-Party Consent
      - Basic Rule: Matlock: Joint access or control for most purposes --> assumption of risk.
      - Appleby
        - Basic Facts
          - Two UD employees married and messy
          - She kept possession of the shared computers including a broken hard drive.
            - Gave it all back to UD.
            - UD gave it to police (consent)
            - Found evidence of hacking (at least traffic interception).
        - Bizarre case because so many different variables swirling around
      - Georgia v. Randolph
        - Wife volunteered to police that husband as a cocaine user and that he kept drug-related items in the home. Husband (present) refused consent, but she agreed.
          - S. Ct. Held: Consent search invalid if one of the co-habitants is present and objects to search.
        - Change Appleby?
      - Password protection / user profiles?
      - Intentional steps to divest third-party of right to consent?
- Searching with a Warrant