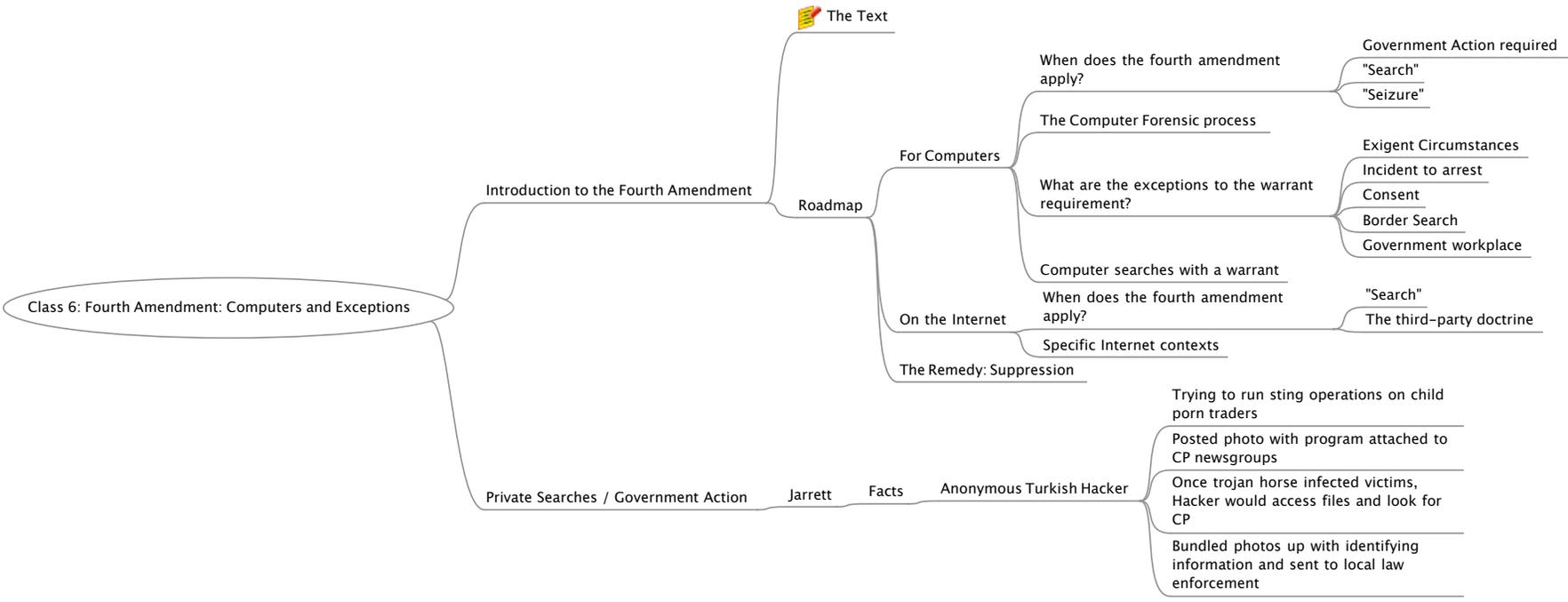


Class 6: Fourth Amendment: Computers and Exceptions

Administrative

- Next Time
    - Spring Break
  - Next Next Time
    - 452-95;504-32
  - News
    - Microsoft adds names to list of recently hacked
  - February 27th Symposium on Big Data and National Security
  - Next Time
    - Andrus
    - Hash values and Caballes
    - Search Incident
- No supplement  
Added four more pages from next time



Class 6: Fourth Amendment: Computers and Exceptions

Private Searches / Government Action Jarrett

Facts

Sting #1: Steiger Steiger raised exact same appeal as Jarrett, and lost in 11th Cir.

Indicted late 2000

Between Steiger and Jarrett

Sting #2: Jarrett 12/3/2001: Hacker contacts Steiger state police officer Murphy

Another child molester from Richmond, VA

Who do you know in FBI?

Murphy responds FBI wants you to send materials to me.

Hacker sends 13 email messages to Murphy

12/13/2001: search and arrest of Jarrett

Explain Fruit of the Poisonous Tree

12/16/2001: Duffy (knowing nothing of Jarrett case)

Steiger has been sentenced

Thanks

12/18/2001: Hacker to Duffy

12/19/2001: Duffy to Hacker

"Proverbial wink and a nod"

"I can not ask you to search out cases such as the ones you have sent to us. That would make you an agent of the Federal Government . . ."

Post-Jarrett Arrest 12/19/2001: Faulkner to Hacker

"But if you happen across such pictures . . ."

You are not a US citizen, and are not bound by our laws

Informal promise of immunity

Next two months, four more messages

Dist Ct: "pen-pal type correspondence."

You are not bound by our laws . . .

Hacker: I will continue to search them out.

Faulkner never tells him to stop.

Jarrett brings motion to suppress after learning of Faulkner email messages

Held

What is a "Search"? REP = Reasonable Expectation of Privacy

Katz

REP

Objective

Subjective

Class 6: Fourth Amendment: Computers and Exceptions

What is a "Search?" Closed Container Rule

David

Facts

- Pre-Internet case
- Flew in from Hong Kong
- Arrested and detained in Vegas
- Conspiracy to smuggle heroin
- Flipped
- Agreed to remain in detention, with frequent visit to Customs Agent's office to make "proffer" and to place consensually wiretapped calls
- Computer memo book
- May 7, 1990 Meeting
  - Lawyer absent
  - In Agent Peterson's office
  - Agent Peterson shoulder surfed David's password
  - Peterson grabbed book, accused David of deleting information
  - Agent tapped in password, opened some incriminating entries
- Motion to Suppress
  - 1. The shoulder surfed password
  - 2. Accessing the book

Held

Single container or Container of Containers?

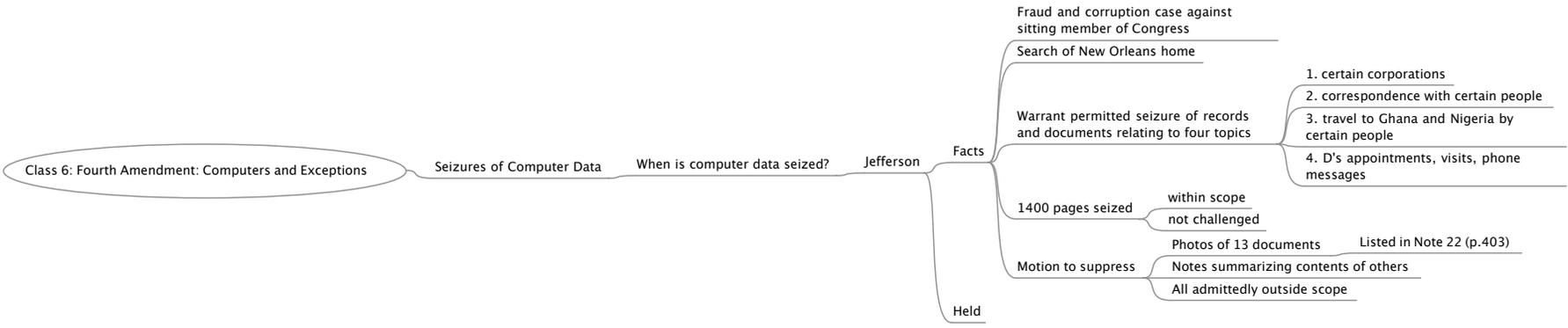
Note 4 Post-David

- All private searches later replicated by police
- Post Jarrett Note 4: Police may reenact an original private search.
- Barth (WD Tex 1998)
  - Searches beyond the FILES (the images) searched by private computer repairman go outside the scope
- Emerson (NY Sup Ct 2003)
  - Police can search the same two DIRECTORIES searched by repairman, but implied that going outside is improper
- Runyan (CA5 2001)
  - Everything on the entire DISK can be searched, even if not seen by private party (estranged wife) because this is just a more thorough search. But implied that OTHER DISKS could not be searched within scope
- Raboin (Mass Super 2008)
  - Since all CD-ROMs in stolen lockbox were similarly labeled, knowing from private search that some had child porn gave police right to look at all.

The Contraband Exception and Hash Values

Seizures of Computer Data Supreme Court's Definition

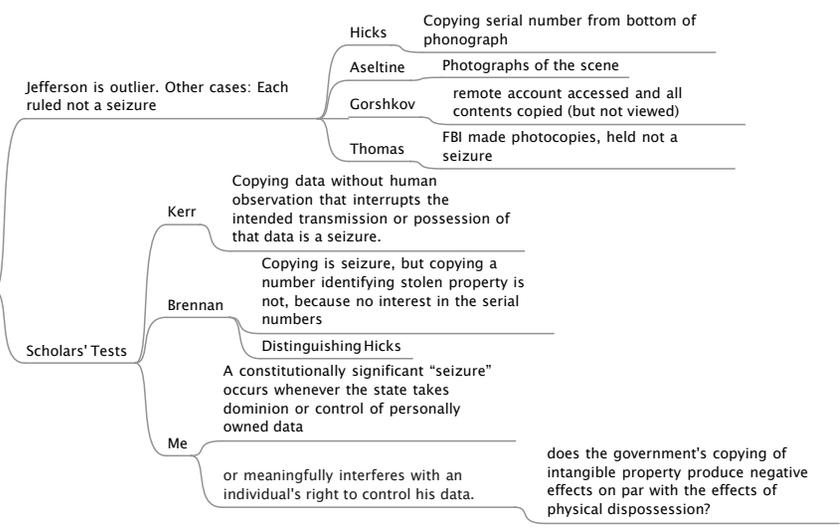
"Meaningful Interference with an individual's possessory interest in the property."

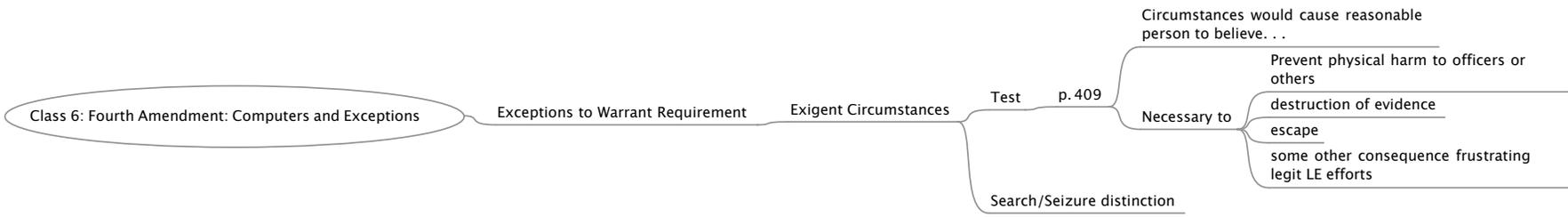


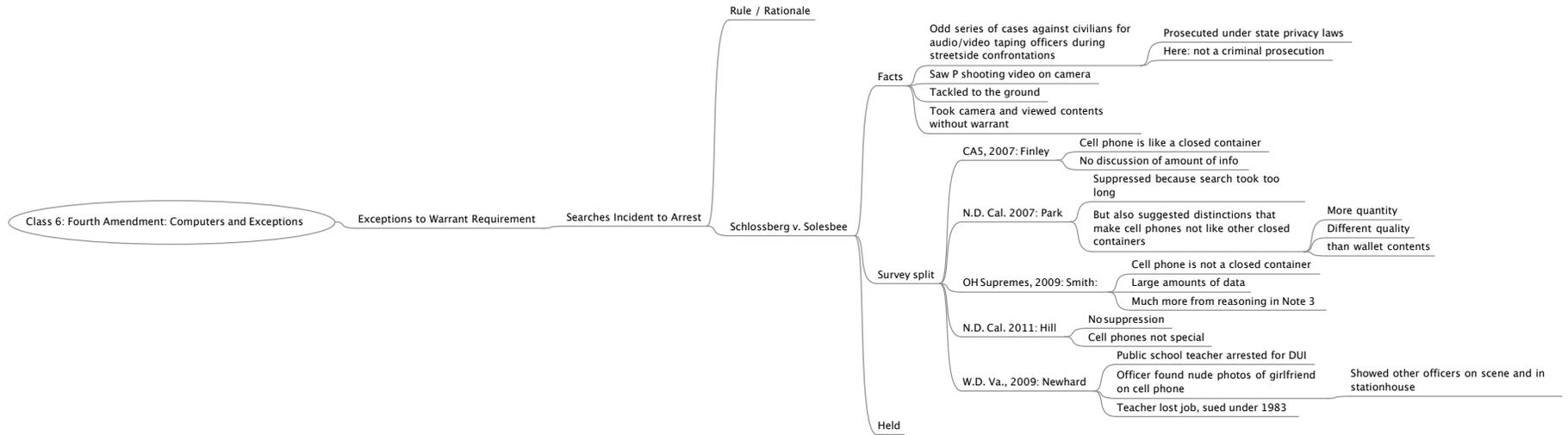
Class 6: Fourth Amendment: Computers and Exceptions

Seizures of Computer Data

When is computer data seized?







Class 6: Fourth Amendment: Computers and Exceptions

Exceptions to Warrant Requirement

- Consent by Defendant
- Third-Party Consent

Scope of Consent

- Test
  - What would the typical reasonable person have understood by the exchange between the agent and the person granting consent?
  - Specifically: Would a typical reasonable person understand consent to search a place include consent to search computers located in that place?
- Al-Marri
  - Facts
    - Qatari citizen moved to US on September 10, 2001
      - Became focus of FBI investigation
    - October 2, 2001: first conversation and consent search of steamer trunk
    - December 11, 2001: Interview at home and FBI office
    - Consent search of laptop
      - FBI: "Take a look at it" back at the office?
      - D consented, turned it off, put it in case, turned it over
      - Declined to sign consent form.
      - 10pm: D: "Do I get my computer back tonight?"
        - FBI: No, not tonight
    - During forensic analysis (over 12 days), found evidence of credit card fraud
      - Indicted
  - Held

Class 6: Fourth Amendment: Computers and Exceptions

Exceptions to Warrant Requirement  
Third-Party Consent

Andrus

Facts

- Suspected Ray Andrus, 51 years old, of downloading Child Porn.
  - Worked at a school
- Eight months into investigation, not enough evidence for warrant to search home.
- Knock and talk.
  - Agent
  - Forensic computer expert
- Ray's Dad, Dr. Bailey Andrus answered door
  - 91 years old!
  - Other facts revealed at suppression hearing
    - Bailey didn't know how to use the computer
    - Bailey had never used the computer
    - Bailey did not know the user name or password.
    - Cable Internet account assigned to user "bandrus."
    - Bailey paid the bill
- Ray lived with parents
  - Did not pay rent
  - Cared for his aging parents
  - Bailey said he felt free to enter Ray's room.
    - When door open, he felt free to enter
    - When door closed, he knocked
  - Door was open during interview
- Bailey Andrus consented to search of house and any computers in it.
  - Ray's computer was only computer in house.
  - Walked them to room and watched first part of search.
- Forensic examiner
  - Opened case of computer (on site)
  - Used forensic software
    - Didn't check for username/PW
    - Testimony: Without forensic software, you'd need username/PW
  - Quick search for JPG files turned up CP in 5 minutes.
- District Court
  - No Actual Authority
  - But Yes, apparent authority
- Held
- Georgia v. Randolph
  - Wife volunteered to let police into home to find husband's cocaine
  - He refused.
  - Held
  - "widely shared social exceptions"
  - Hudspeth