

# Search and Seizure: Justifying Spontaneous Computer Seizures

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*In the previous article < [insert link to appropriate page](#) > in this column, we looked at the fundamental exclusion of border-crossing regulations from constitutional protections against arbitrary search and seizure. Today we continue the examination of the issue of arbitrary search and seizure at the borders of the country.*

The powers of the Customs and Border Patrol (CBP) are eloquently defended by Jayson Ahern, Deputy Commissioner of CBP in June 2008 in his commentary, “CBP Laptop Searches.” < <http://www.dhs.gov/journal/leadership/2008/06/cbp-laptop-searches.html> > He gives several interesting examples of unexpected discoveries of dangers to national security from computer searches:

- 2004: a Canadian traveller was carrying software stolen from a US firm; he was eventually convicted of violating the Export Administration Act < [www.fas.org/sgp/crs/secrecy/RL31832.pdf](http://www.fas.org/sgp/crs/secrecy/RL31832.pdf) > trying to sell restricted software to the People’s Republic of China.
- 2005: a traveler showing extreme nervousness when he was chosen for more detailed examination turned out to be carrying child pornography on his laptop computer and on compact discs.
- 2006: A currency smuggler had information on his laptop computer about “cyanide and nuclear material.”
- 2006: A student randomly selected for detailed screening was carrying a laptop computer with information on improvised explosive devices, a picture of the traveller reading his will, and pictures of Al-Qaida terrorists.
- 2007: A visitor acting strangely was subjected to a detailed search; his laptop computer included “violent jihadist materials” and led to his identification as a recruiter for terrorist groups.

He adds, “It is not our intent to subject legitimate travelers to undue scrutiny, but to ensure the safety of the American public. In conducting these searches, we are fully dedicated to protecting the civil rights of all travelers.” In the next paragraph, he writes, “Moreover, CBP officers adhere to strict constitutional and statutory requirements, including the Trade Secrets Act, which explicitly forbids federal employees from disclosing, without lawful authority, business confidential information they may access as part of their official duties. We also protect information that may be uncovered during examination as well as private information that is not in violation of any law.”

In a posting issued in August 2008 entitled, “Laptop Inspections Legal, Rare, Essential,” Ahern argues that for more than 200 years, the federal government has been granted the authority to prevent dangerous people and things from entering the United States. Our security measures at the border are rooted in this fundamental fact, and our ability to achieve our border mission would be hampered if we did not apply the same search authorities to electronic media that we have long-applied to physical objects – including documents, photographs, film and other

graphic material.”

He continues by pointing out that, “In the 21st century, terrorists and criminals increasingly use laptops and other electronic media to transport illicit materials that were traditionally concealed in bags, containers, notebooks and paper documents. Making full use of our search authorities with respect to items like notebooks and backpacks, while failing to do so with respect to laptops and other devices, would ensure that terrorists and criminals receive less scrutiny at our borders just as their use of technology is becoming more sophisticated.”

Another valuable contribution is his assurance that “travelers whose laptops are searched represent a very small number of people.” He quotes a comment by Secretary of Homeland Security Michael Chertoff < <http://www.cov.com/mchertoff/> > who said that “Of the approximately 400 million travelers who entered the country last year, only a tiny percentage were referred to secondary baggage inspection...[and] of those, only a fraction had electronic devices that may have been checked.” < [http://www.crn.com/news/security/209902679/customs-and-border-protection-officers-can-now-seize-electronic-devices.htm;jsessionid=uDT50TprYIYXCTnJskP5Q\\*\\*.ecappj01](http://www.crn.com/news/security/209902679/customs-and-border-protection-officers-can-now-seize-electronic-devices.htm;jsessionid=uDT50TprYIYXCTnJskP5Q**.ecappj01) > In that article by Michele Masterson for CRN, Chertoff said that “every federal appellate court in the country to address the laptop issue, including the 9th Circuit, has concluded that, at the border, “there is no constitutional basis for treating laptops differently than hard copy documents.”

So far, then, I don’t think that travelers have to worry too much about having their laptops searched or seized at the border – but don’t expect to have any recourse against a search or seizure if an official decides on it.

These are familiar arguments in the world of privacy rights; they amount to the assurance that the current administration / government / agency / personnel are endowed with the highest moral standards and the best of intentions in protecting the people of the United States. Alas, the fundamental issue is that without the rule of law and due process, the people are potentially subject to abuse by people who turn out not to be endowed with the highest moral standards and who do not have the best of intentions in protecting the people of the United States.

Gosh, maybe we should actually make a point of voting so the Good Guys can keep choosing to protect our rights, eh?

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