Key Points

- The examination of electronic devices by CBP occurs in an extremely small percentage of border crossings.

- These examinations are controlled and follow policies and procedures that have been made publicly available on the CBP website.

- These examinations have been very productive and have led to arrests, criminal investigations, refusals of admission.
Court Cases

The U.S. Supreme Court has recognized the "right of the sovereign to protect itself by stopping and examining persons and property crossing into this country." And 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 absent individualized suspicion.

- **U.S. v. Arnold, 1998** Circuit Judge Diarmuid O'Scannalain wrote in the panel's April 21 decision in the case of U.S. v. Arnold, filed April 21 2008 United States Court of Appeals, Ninth Circuit that "Courts have long held that searches of closed containers and their contents can be conducted at the border without particularized suspicion under the Fourth Amendment," O'Scannalain wrote. "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."

- **U.S. v. Montoya de Hernandez, 1985** A woman arriving in Los Angeles from Columbia was detained. Police believed she had swallowed balloons filled with cocaine, even though the court said they had no "clear indication" of it and did not have probable cause to search her. Nevertheless, the Supreme Court said police could search De Hernandez because it was a border crossing. (The search, by the way, did find 88 balloons filled with cocaine that had been smuggled in her alimentary canal.)
Lost and Stolen Laptops

- 101 inbound laptops were seized at airports by CBP-Office of Field Operations in the Passenger Environment from October of 2006 to August of 2008.

- In 2007 the Metropolitan Washington Airports Authority, which operates Ronald Reagan Washington National Airport and Dulles International Airport, said that 276 laptops were turned in to lost and found.

- In a twelve month period two airports reported a more than 150% increase in lost laptops than laptops seized by CBP in the Passenger Environment at all airports in a 20 month period.

- Clearly there is substantially great chance that travelers will lose or have their laptops stolen at airports than there is of travelers having laptops seized by CBP.
Laptop Searches

- The examination of electronic devices by CBP occurs in an extremely small percentage of border crossings.

- For instance, for August 2008, CBP encountered more than 38 million travelers at U.S. ports of entry.

- Of these more than 38 million travelers, approximately 748,500 travelers participated in secondary inspection, but only 139 individuals were subject to a laptop inspection.

- Therefore, during this period, approximately 0.019 percent of all travelers referred to secondary inspection were subject to a laptop inspection.
Comparable Statistics

- The odds in August 2008 of having your laptop searched (not seized -- that would be even more unlikely) are 1 in 421,225.

- By comparison, the odds of being struck by lightning in a given year are 1 in 400,000 (Source: National Weather Service). You are literally more likely to be struck by lightning than have your laptop searched.

- The odds of dying by falling off and chair or bed is 1 in 347,000 (Source: National Safety Council). There is a greater chance of dying from falling out of bed on a given morning than there is of getting your laptop searched when you travel.
Threats Posed by Other Countries

- Other countries examine and image laptops and electronic storage devices of travelers at airports and through clandestine methods during periods of travel.

- "During a trip to Beijing in December 2007, spyware programs designed to clandestinely remove information from personal computers and other electronic equipment were discovered on devices used by Commerce Secretary Carlos Gutierrez and possibly other members of a U.S. trade delegation, according to a computer-security expert with firsthand knowledge of the spyware used." (National Journal article "China's Cyber-Militia" May 21, 2008)

- "Gutierrez was in China with the Joint Commission on Commerce and Trade, a high-level delegation that includes the U.S. trade representative and that meets with Chinese officials to discuss such matters as intellectual-property rights, market access, and consumer product safety." (National Journal article "China's Cyber-Militia" May 21, 2008)
What if...

- New restrictions were placed on border search authority?
- DHS may not be able to find this:

(b)(2); (b)(7)(E)

- These images were found on laptops during border searches by DHS.
Homeland Security

Monday, December 8, 2008

Briefing for the ART

Laptop Search Policy and Procedures
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- Therefore, during this period, approximately 0.019 percent of all travelers referred to secondary inspection were subject to a laptop inspection.
Laptop Searches November 2008

- Total Number of People or Vehicles Encountered: 29,755,058
- Number of Secondary Searches: 615,763
- Number of Laptops Searches: 67
- Number of Laptops Detained: 16
- Number of Laptops Seized: 8
- Of the 8 Laptop seizures in November, there were 2 arrests and 1 inadmissible determination, with 1 inadmissibility decision pending (associated with the second arrest).
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Some of the Images found on Laptops

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(b)(2); (b)(7)(E)
Since October 2007

(b)(2); (b)(7)(E)