

Recent Case Report

U.S. v. Comprehensive Drug Testing Inc.

(9th Cir. 2009) __ Cal.4th __ [2009 WL 2605378]

On August 26, 2009, the Ninth Circuit filed its en banc opinion in this case which resulted from the federal investigation into steroid use by major league baseball players, and the execution of warrants to search laboratory computers for test results. In an unusually pretentious opinion, the court purported to impose sweeping restrictions on the manner in which *all* warrants to search computers are issued and executed. Among other things, it announced that computer searches should be conducted by disinterested observers; and that unlisted evidence in plain view must be suppressed, as federal judges “should insist that the government waive reliance upon the plain view doctrine in digital evidence cases.”

We have decided to forgo reporting on this case for the following reasons: (1) it is not binding on California courts; (2) it can properly be applied only to searches of computers that are operated by a third party who was not suspected of involvement in the crime under investigation; (3) it is contrary to long-standing decisions of the Supreme Court pertaining to its plain view and nexus rules; and (4), while the court presumed to dictate new and radical restrictions on the law pertaining to the issuance and execution of search warrants—an area of vital importance—its opinion was based on nothing more than the court’s officious proclivities, not sound legal precedent or analysis.

Moreover, it demonstrates an almost paranoid obsession with computer privacy. And it is hard to avoid the conclusion that it was driven largely by the recent embarrassing revelations concerning the contents of the home computer of the judge who wrote the opinion. In fact, while the judge was adjudicating this appeal, a panel of federal judges was investigating his use of the computer at the request of the Supreme Court. As a result, the judge was publicly rebuked for “exhibiting poor judgment.” POV