

# Cyber Crime and Digital Evidence



# Cyber Crime and Digital Evidence

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Materials and Cases

THIRD EDITION

Thomas K. Clancy

PROFESSOR EMERITUS

UNIVERSITY OF MISSISSIPPI SCHOOL OF LAW



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*To my Family: Sally, Kevin, and Brian*



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# Preface to the Third Edition

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As stated in the second edition, the rapidity of change required publishing a new edition of this book. New cases continue to add clarity and needed guidance to the acquisition of digital evidence procedures required of law enforcement. New technology and case law discussing the impact of that technology have been added throughout the book. Of particular note, this third edition was delayed until *Carpenter v. United States*, 585 U.S. \_\_ (2018), was decided. That case has the potential to revolutionize the Fourth Amendment's role in the acquisition of digital evidence. Also included in this edition are significant new cases on social media, the use of forensic software to execute a warrant, sexting, the Computer Fraud and Abuse Act, the regulation of threats, and sentencing.

This book is entitled "Cyber Crime and Digital Evidence" for one fundamental reason. In law practice, it is more likely that a lawyer or judge will now encounter digital evidence in almost every case and situation, given its ubiquity in modern life. Hence, about half of this book is devoted to the government's acquisition of digital evidence, regardless of the underlying crime. The balance of the book is devoted to various aspects of the criminal law that have been modified to address the variety of new forms of bad behavior that are facilitated by digital devices and networks.

Thomas K. Clancy  
July 2018



# Preface to the Second Edition

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The rapidity of change required publishing a new edition of this book rather than supplementing the first edition. New cases, particularly United States Supreme Court cases on searching cell phones, have begun to add clarity and needed guidance to the acquisition of digital evidence procedures required of law enforcement. New technology and case law discussing the impact of that technology have been added throughout the book.

Thomas K. Clancy  
December 2014



# Preface to the First Edition

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This book is designed to be an accessible introduction to Cyber Crime and Digital Evidence. The title is consciously styled: *Cyber Crime and Digital Evidence: Materials and Cases*. The title illuminates two significant aspects of this book. First, cyber crime is only a subset of a much broader trend in the criminal area, which is the use of digital evidence in virtually all criminal cases. Hence, it is important to understand the legal framework that regulates obtaining that increasingly used and important evidence. Second, by listing “materials *and* cases” (in that order) the title signals that this book attempts to provide a broader framework than an endless stream of cases offers. Law students deserve the broader context and, hopefully, will get some of it with this book.

This book is the product of numerous influences, ranging from many years of teaching law students, studying the Fourth Amendment and Cyber Crime, and witnessing the explosion of the use of digital evidence in criminal cases. Most immediately, I thank those who provided comments and insights on various aspects of the book. Those individuals include Don Mason, Will Wilkins, and Priscilla Grantham. I received invaluable editorial assistance from Andrew Coffman. For the past decade, I have had the privilege of serving as Director of the National Center for Justice and the Rule of Law and Research Professor at the University of Mississippi School of Law, where I created and developed national programs on Cyber Crime and the Fourth Amendment. Through those programs, the Center offers educational opportunities to judges, prosecutors, and law enforcement on search and seizure, including in emerging areas such as computer searches and seizures, and on broad areas concerning cyber crime. The conferences, lectures, and associations developed at the Center have brought many of the best minds in the country to Oxford, Mississippi to examine the new trends in the criminal law involving new forms of criminal activity and new forms of evidence. The thousands of judges, assistant attorneys general, and other attendees of the Center’s events contributed many insights about actual litigation and law enforcement practices, as well as other challenges involved in adapting criminal law, procedure, and practice to the digital age. From each of those participants I have learned much and I deeply appreciate their contributions.

Thomas K. Clancy  
December 1, 2011



# A Note on Editing

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The cases and materials in this book are extensively edited and most changes are done without acknowledgment of omissions of text or other material. Footnotes may be omitted or numbering changed. Capitalization and formatting are often changed based on omissions to the text. The reader should always consult the original source before citing or quoting material herein.





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