

## Legal Updates

### Online AOL fraud leads to consent to search

U.S. v Buckner, 2007 WL 64268 (4<sup>th</sup> Cir.)

A number of complaints alleging online fraud were traced to accounts on eBay and AOL opened in the name of the defendant's wife. The police spoke with the defendant's wife and she acknowledged owning a computer that she used to play solitaire.

Returning a second time to the suspect's residence police were told that he was not at home, but they could come in and take whatever they needed. Police turned off the computer and copied its hard drive. Evidence linking the defendant to online fraud was recovered from the computer and he was convicted. The defendant, in his appeal, claimed his wife could not give permission to search the computer since his files were password protected.

#### **Decision: Conviction affirmed**

The court determined officers knew the computer was leased in the defendant's wife's name alone, was located in a common living area of the home, and was on when they entered even though the defendant was not present giving officers a reasonable belief she had authority to give consent. There was nothing to indicate she knew there were password protected files in the computer and thus could give consent for the search.

CFInsider comment: In the above case it is interesting to note had the defendant's wife known files were password protected she may not have been authorized to give consent. This would be like a company allowing an employee to place his own lock on his office door. This gives an additional expectation of privacy which may restrict searches by the company or the ability to give consent for a search of the office.