

Monday, February 18. 2008

Fifth Amendment protects right to withhold computer password.

Computer hard drive. (Image from Pacific Northwest Laboratory's website). The Fifth Amendment protects one from disclosing his or her computer password. In re Grand Jury Subpoena (Boucher), 2007 U.S. Dist. LEXIS 87951 (D. Vt. Nov. 29, 2007) (Niedermeier, Mag. J.). From reading this Boucher opinion -- which reached the press and blogosphere upon publication, and which I discuss here in part to keep the caselinks conveniently indexed for easy retrieval and monitoring -- one would wonder whether this is the first time this issue has been handled head-on in a written court opinion available on Lexis and Westlaw (Orin Kerr believes the answer is yes). A Shepard's search does not show this November 2007 opinion cited in any subsequent court opinions. A review of the Boucher online docket (the criminal complaint is here) shows that the prosecution filed an appeal from Magistrate Judge Niedermeier's order on January 2, 2008. On February 11, 2008, defendant Boucher filed a surreply in District Court to the prosecutor's appeal; that is the last docket entry in the case thus far. Jon Katz.

Posted by Jon Katz in Criminal Defense at 19:30