

Hamilton County LAW LIBRARY NEWS

Professional legal information, services, and education

A Monthly Newsletter from the Hamilton County Law Library

September 2014

Second Circuit Finds Fourth Amendment Violation in Law Enforcement Retention of Computer Files Not Within Scope of Search Warrant By Ian M. Cominsky, Matthew D. Lee and Bridget E. Mayer of Blank Rome.*

On June 17, 2014, the United States Court of Appeals for the Second Circuit issued a significant Fourth Amendment decision in *United States v. Ganas*. The decision is premised on the well-established notion that, because of the practical realities involved in searching a computer for files responsive to a warrant, law enforcement may seize or image computers in their entirety and later search them for responsive documents. In *Ganas*, the Second Circuit became the first federal court to clarify that the government's right to seize files outside of the scope of a warrant is limited in that the government may not retain files indefinitely. Rather, pursuant to the Fourth Amendment, individuals have a right to the deletion or return of non-responsive computer files.

Factual Background

Defendant Stavos M. Ganas provided accounting services to American Boiler and Industrial Property Management ("IPM"), two companies owned by James

McCarthy. IPM was hired by the Army to provide maintenance and security at a vacant Army facility. In 2003, the Army received a tip that IPM employees were stealing items from the facility and were billing the Army for work done for American Boiler. The Army began an investigation, and obtained a search warrant for Ganas's office, where the tipster said evidence of the fraud would be found.

At Ganas's office, investigative agents imaged (made exact copies of) the hard drives of Ganas's computers. Ganas was assured at the time of the seizure that the Army was only looking for documents related to American Boiler or IPM and that everything else would be purged once the Army had completed its search for relevant documents. The IRS soon

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Hamilton County Law Library

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[www.http://www.hamilton-co.org/cinlawlib/](http://www.hamilton-co.org/cinlawlib/)

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Tech Tip: Set Up Tracker News in Wolters Kluwer IntelliConnect

By Julie Koehne, Assistant Law Librarian, Systems

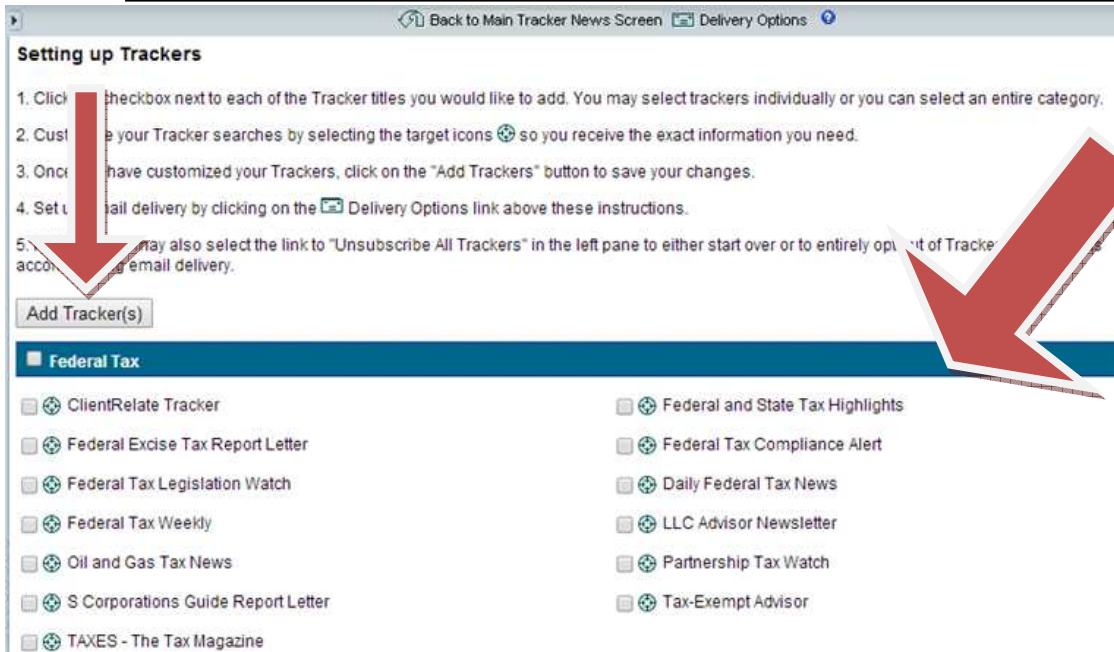
Tracker News allows you to keep up to date with the latest news and changes impacting a particular topic of interest. Trackers can be emailed to you every morning or they can be accessed through your RSS Reader.

Step 1: Login to our website at <http://www.hamilton-co.org/cinlawlib/intra/login.asp> and go to the Topical Databases tab.

Step 2: Once you're in IntelliConnect, select the Tracker Setup tab.

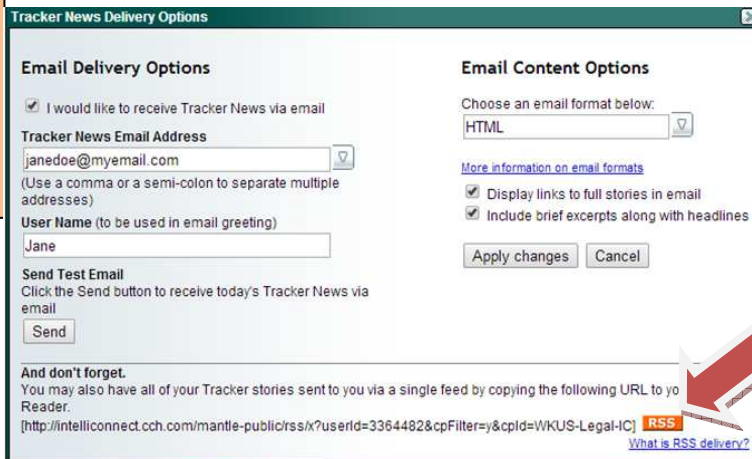


Step 3: Follow the instructions on the Setting Up Trackers page by selecting the desired titles and then selecting Add Trackers.



Step 4: Enter your email address and preferences.

Follow this link for a demo created by Wolters Kluwer.
<http://researchhelp.cch.com/flashfiles/flashhelp.html?>



If you prefer, you may choose to send your Tracker stories to your RSS feed reader.

Upcoming CLE

Free to subscribers; \$50 for non-subscribers
To register, call 513.946.5300 or via email
reference@cms.hamilton-co.org

Signed? Sealed?? Delivered???: The Effects of the Uniform Electronic Transaction Act (1306.01) on your Contracts, Trusts, and Wills

Presenter: John Cobey
Thursday, September 18
Noon-1pm
Approved for 1.0 hour of general credit in Ohio and Kentucky

Use & Abuse of Government Information: How Can You Benefit?

Presenter: James T. O'Reilly
Thursday, September 25
Noon-1pm
Approved for 1.0 hour of general credit in Ohio and Kentucky

Lexis CLE: Advanced Search Tips & Federal Resources

Presenter: Mallory Coakley
Thursday, October 23
Noon-1pm
Approved for 1.0 hour of general credit in Ohio

Ohio CLE Credit for Fastcase Webinars

The Fastcase webinar series (www.fastcase.com/webinars) has been approved for CLE credit in Ohio. Effective immediately, when attorneys attend any of Fastcase's three legal research webinars, they will receive 1.00 hours of CLE credit. Fastcase, a fifty state plus federal case law

resource, is available to all Law Library subscribers and to county officials at the library. It is available off-site as well, to county officials and to subscribers in solo practice and with firms that subscribe on behalf of all their attorneys.

CLE credit-bearing webinars from Fastcase include:

- Introduction to Research Legal on Fastcase
- Introduction to Boolean (Keyword) Search
- Fastcase for Paralegals
- Advanced Tips for Enhanced Legal Research on Fastcase

A Tribute to a Colleague

It's with sorrow that we inform our readers of the passing of our long-time colleague Charles Kallendorf on August 19, following a period of declining health. Chuck had worked for Hamilton County for nearly forty years, in the Law Library as public services assistant since late 1999 and, earlier, for the Auditor's office. He authored most of our blog posts over the past decade and provided research guidance to countless legal professionals and members of the general public. Chuck had the lights on, coffee brewed, and computers booted up every day before some of us were awake. We will miss Chuck's research, service to library users, and his wit.



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joined the investigation and was given copies of the imaged computer files. By December 2004, the Army and IRS had isolated and extracted all computer files relevant to American Boiler and IPM. They did not delete the nonresponsive files, however, believing them to be “the government’s property.”

By 2005, IRS investigators began to suspect from paper documents from Ganiias’s office as well as certain bank records that Ganiias was not properly reporting American Boiler’s income. As a result, the investigation was expanded to include tax violations by Ganiias. On April 24, 2006, over two-and-a-half years after the seizure, after failing to obtain Ganiias’s permission to access certain of his personal files that were contained in the original seizure, the government obtained another warrant to search the preserved images. Ganiias has altered the original files after the original warrant execution so the evidence obtained was only available because of the government’s retention of the imaged files outside the scope of the original warrant.

Ganiias’s Indictment, Conviction, and Appeal

In October 2008, Ganiias was indicted for conspiracy and tax evasion. He was convicted of tax evasion after a jury trial on April 1, 2011.

Ganiias appealed his conviction claiming that his Fourth Amendment rights were violated when the Government copies his computer hard drives pursuant to a search warrant and then retained files beyond the scope of the warrant for over two-and-one-half years.

The Second Circuit’s Decision

In examining Ganiias’s case, the court limited its review to the following question: “whether the Fourth Amendment permits officials executing a warrant for the seizure of particular data on a computer to seize and indefinitely retain every file on that computer for use in future criminal investigations.” It answered the question in the negative.

The Second Circuit began its analysis by recognizing that computer files merit Fourth Amendment Protection from unwarranted intrusion because they may contain intimate details of a person’s thoughts, beliefs and lifestyle. The Fourth Circuit also recognized, however, that because computers can store massive amounts of information, documents often cannot feasibly be sorted on-site and off-site review of an entire computer (or image thereof) is often appropriate, subject to the rule of reasonableness.

The Second Circuit determined that the government’s retention of copies of Ganiias’s computer files for two-and-a-half years and subsequent search of those files was unreasonable because the 2003 warrant did not authorize the seizure of Ganiias’s personal records, and the government could not retain those files for a prolonged period of time and then use them in a future criminal investigation. As a result, the Court concluded that the government’s actions were unconstitutional. In coming to this conclusion, the Court rejected several arguments offered by the government to justify its actions, including arguments that: (1) the imaged files were government property; (2) the 2006 warrant cured any defect in its search of the wrongfully obtained files; (3) the search was proper because the files no longer existed in Ganiias’s

computers; (4) returning or deleting non-responsive files is impractical; and (5) Ganas failed to bring a motion for return of property.

The Court then turned to the appropriate remedy. The Court initially noted that the government is not necessarily precluded from utilizing unlawfully obtained evidence in a criminal prosecution. Rather, exclusion is only appropriate where: (1) there is a widespread seizure of items outside the scope of the applicable warrant; (2) agents did not act in good faith; and (3) the benefits of deterrence outweigh the costs of suppression. The Court then determined that suppression was appropriate and vacated Ganas's conviction.

Conclusion

This case has obvious importance given the prevalence of computer seizure in this day and age. Subsequent decisions by the Second Circuit or other courts will hopefully address issues left open in Ganas including how long files may reasonably be retained for off-site review or after off-site review, and whether the government must affirmatively purge non-responsive documents, or simply avoid using them

For more information, contact [Matthew D. Lee](#).

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Updates on Facebook

The Law Library's Facebook page has over 200 likes. Our users and friends are keeping up to date on law library events and news via Facebook, Twitter, and our blog. It's a great way to take note of updates and information about upcoming CLEs.

CALI Lessons

CALI* Lessons aren't just for law students. The Hamilton County Law Library offers hundreds of self-paced online CALI* Lessons for use by our subscribers and county officials. From practice areas to legal research, CALI Lessons offer the practitioner a great refresher or an introduction to an area of law. CALI Lessons are available in our computer room. Any of our librarians would be glad to provide a quick introduction.

*Center for Computer-Assisted Legal Instruction

Website Usability Testing

We will launch the Law Library's new website shortly. Are you willing to give the new site a test drive before it goes public? We'd love to have some users test a few features. It will take just fifteen minutes of your time and we'll acknowledge your assistance with a \$5 Dunkin Donuts gift card. Please contact [Mary Jenkins](#) to schedule.

Fastcase Access

Many of our users rely on Fastcase for 50 state and federal case law, available to subscribers and county officials 24/7 offsite. We're happy to report that our access to Fastcase is no longer geographically restricted; all of our subscribers who are solo attorneys or with 100% participating law firms may use it. Please contact a [librarian](#) here if you have any questions about Fastcase.

Subscriber Benefits

All subscribers have access to the following valuable resources and services:

Circulation privileges to borrow from over 40,000 print volumes for up to 6 weeks at a time

Access to extensive electronic databases from the Law Library, including LexisNexis, Shepards', CCH Omnitax, CCH Human Resources Group, and CCH Business Group resources, Hein Online Law Journals and Federal Register, and over 70 Aspen / LOISLaw treatises in 16 substantive areas

Wireless network throughout the Law Library

Polycom videoconferencing

5 meeting rooms with speaker phones

Professional reference service by our law librarians, available via e-mail, telephone, and in person

Free document delivery by fax or e-mail of print and electronic materials

Inexpensive CLE seminars throughout the year, on legal research and substantive topics

In addition, solos and attorneys whose firm has a subscription have 24 hour remote access to Fastcase.com case law, Aspen/ LOISLaw treatises and CCH Newsletters

You and the Legal System: Elder Law

Attorney Joseph Luken is our next speaker in the *You and the Legal System* series for the public. Mr. Luken will discuss Elder Law on Friday, September 19 at noon in the Law Library. The discussion will focus on:

- Estate Planning
- Probate
- Medicaid

The program is free to the public. To register, call 513.946.5300.

Please note that this is not a CLE event; it is intended for the general public. However, attorneys are welcome to attend and may want to pass along the program announcement to clients, staff and community organizations. If you would like more information, please contact Laura Dixon-Caldwell at 513.946.5300.

You and the Legal System is brought to you as a public service by the Hamilton County Law Library, in conjunction with the Cincinnati Bar Association's Lawyer Referral Service. Save the date for the next event in the *You and the Legal System* series. Attorney Brian Flick will discuss Foreclosure on Friday, October 12 at noon in the Law Library.



Elder Law Resources

The Law Library offers a variety of print and electronic resources on Elder Law. If you have questions about access to any of these resources, just call us at 513.946.5300.

Advising the elderly of disabled client: legal, health care, financial and estate planning
KF390.A4 F7513 2014

Anderson's Ohio elder law practice manual
KFO140 .L66 2014

Elder law and financial strategies: planning for later in life
KF390.A4 H96 2014

Elder law answer book
KF390.A4 F58 2010

Elder law handbook
KFO91.A3 E42 2010

Estate planning and recovery for elderly clients in Ohio
KF091.A3 E78 2010

Everyday law for seniors
KF390.A4 F7535 2010

Guardianships
KFO106 .G82 2013

How to protect elders from harm
KF1257 .O727 2009

Litigating the nursing home case
KF3826.N8 O74 2009

Medicare guide

KF3608 .A4 M436 2014

Ohio elder law
KFO91.A3 O365 2013

Ohio Elder Law Institute
KFO91.A3 O35 2013

Resolving legal and financial issues in elder care in Ohio
KFO91 .A3 E43 2011

Online Resources/Remote Access

Aspen/LoisLaw Elder Law Library:

Forms & Checklists

Representing the Elderly Client

Elder Law Forms Manual

The Elder Law Portfolio Series

Elder Law Answer Book

Social Security & Medicare Answer Book

The Elder Law Report

Special Needs Trust Handbook

Loring and Rounds: A Trustee's Handbook

CCH

Medicare and Medicaid Guide Newsletter

Medicare and Medicaid Guide Explanations and Annotations

Social Security Reporter

EBSCO

Complete Guide to Medicaid and Nursing Home Costs

Long Term Care

Social Security & Medicare Handbook

Social Security, Medicare and Government Pensions

*Remote access is available to subscribers who are solos or firm attorneys whose entire firm has a subscription to the Law Library.

Upcoming Events:

September 18: CLE: Signed? Sealed?? Delivered???: The Effects of the Uniform Electronic Transaction Act (1306.01) on your Contracts, Trusts, and Wills

September 19: You and the Legal System: Elder Law

September 25: CLE: Use & Abuse of Government Information: How Can You Benefit?

October 12: You and the Legal System: Foreclosure

October 23: Lexis CLE

Law Library Holidays:

The Law Library will be closed on Monday, September 1 in observance of Labor Day.



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