

Case Summary

United States v. Segal

2004 WL 635065 (N.D. Ill. 2004)

Government Ordered Not to Review Defendant's Privileged Electronic Documents

The government seized two hundred boxes of the defendant's documents, and a significant amount of the defendant's electronic information; including several personal computers, and back-up tapes of the defendant's payroll, fax, and accounting servers. The defendant moved for a return of all privileged information that was seized and to bar the government from using this information for any purpose. The motion was initially granted, but the court subsequently granted the Government's motion to reconsider.

The court also ordered the defendant to create a privilege log. The defendant gave the court a privilege log containing 13,000 privileged communications. The defendants claimed that the government had reviewed privileged communications because it failed to use proper screening techniques. The defendant stated that the government could have screened the communications and separated out the privileged information by using commercial software or a third party. Furthermore, the defendant also pointed out that the Government did not follow Department of Justice guidelines for searching seized materials.

However, the court stated that for the defendant's due process to have been violated, the government's violation of the defendant's attorney client privilege must shock the court's conscience. The court laid out a three-part test to determine whether something "shocks its conscience" (1) the government must have knowledge of the attorney client privilege, (2) the government must make a deliberate intrusion into that relationship, and (3) there must be actual and substantial prejudice.

Decision

The court held that although the government's actions should not be condoned, they did not rise to a level that shocked the court, and therefore did not violate the defendant's due process rights and therefore did not warrant the suppression of evidence that the plaintiff was seeking. The court did however, order the government not to review documents from the privilege log or to present any of the documents from the privilege log without a court determination that those documents were not privileged.

Privileged Electronic Documents