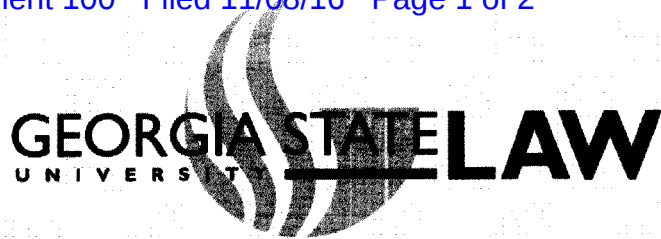


Clark D. Cunningham
W. Lee Burge Professor of Law & Ethics
P.O. Box 4037
Atlanta, GA 30302-4037
Phone: 404/413-9168
Fax: 404/413-9225
Email: cdcunningham@gsu.edu
Home page: <http://law.gsu.edu/ccunningham/>



November 4, 2016

RECEIVED

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**JAMES L. ROBERT
U.S. DISTRICT JUDGE**

The Honorable James L. Robart
United States District Court
Western District of Washington
United States Courthouse
700 Stewart Street, Suite 14128
Seattle, WA 98101 – 9906

Re: Microsoft v Department of Justice, C16-0538-JLR

Dear Judge Robart:

I enclose a copy of *Apple and the American Revolution: Remembering Why We Have the Fourth Amendment*, 126 Yale L.J.F 218 (2016), published on the website of the Yale Law Journal on October 26, 2016 at www.yalelawjournal.org/forum. On August 19, 2016 I sent a draft of this article to counsel for plaintiff and defendant in this matter

The article provides a concise history of events prior to the Revolutionary War that led to the adoption of the Fourth Amendment and relates that history to current controversies over the use of search warrants to obtain electronically stored information from cell phones and email accounts in the cloud. I specifically discuss *Microsoft v DOJ* on pages 219 and 225-228, drawing comparisons between the Lord Halifax general warrants used in 1763 to seize all of a suspect's private papers and search them for evidence of seditious libel and the use of search warrants by the DOJ to obtain a person's complete email account from Microsoft (and other cloud-based email providers) and conduct email-by-email review. In footnote 76 on page 230 I summarize historical evidence indicating that the Founders would have considered the execution of a search warrant without the notice provided to the target by an inventory and return on the warrant to be an "unreasonable search."

Respectfully yours,

A handwritten signature in cursive script that reads "Clark D. Cunningham".

Clark D. Cunningham
W. Lee Burge Chair in Law & Ethics

cc:

Eric J. Soskin
U.S. Department of Justice
Civil Division Federal Programs
P.O. Box 883
Washington, DC 20044

Stephen M. Rummage
Davis Wright Tremaine
1201 Third Avenue, Ste. 2200
Seattle, WA 98101-3045

James McMackin Garland
Covington & Burling LLP
One City Center
850 Tenth Street, NW
Washington, DC 20001

Laura R. Handman
Davis Wright Tremaine
1919 Pennsylvania Ave NW, Ste. 800
Washington, DC 20006