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Constitutional Issues *In the New Millennium*

Part I of IV

The Fourth Amendment Project

The Erosion of Search & Seizure Protection in the 21st Century

Introduction | Search & Seizure
Reasonable Expectation of Privacy | Exceptions | Exclusionary Rule

Make a Donation

Deuteronomy 24:10-11 (AMP)

When you lend your brother anything, you shall not go into his house to get his pledge. ¹¹ You shall stand outside and the man to whom you lend shall bring the pledge out to you.

Micah 2:8-10 (AMP)

⁸ But lately (yesterday) My people have stood up as an enemy [and have made Me their antagonist]. Off from the garment you strip the cloak of those who pass by in secure confidence of safety *and* are averse to war. ⁹ The women of My people you cast out from their pleasant houses; from their young children you take away My glory forever. ¹⁰ Arise and depart, for this is not the rest [which was promised to the righteous in Canaan], because of uncleanness that works destruction, even a sharp *and* grievous destruction.

Introduction

The Fourth Amendment to the US Constitution

The Fourth Amendment [has] its roots in English legal doctrine. It reads:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Sir Edward Coke, in *Semayne's case* (1604), famously stated: "The house of [everyone] is to him as his castle and fortress, as well for his defense against injury and violence as for his repose."

Search & Seizure

[The] threshold question in Fourth Amendment jurisprudence is whether a "search" has occurred. Initial Fourth Amendment case law hinged on a citizen's property rights—that is, when the government physically intrudes on "persons, houses, papers, or effects" for the purpose of obtaining information, a "search" within the original meaning of the Fourth Amendment has occurred.

Early 20th-century Court decisions, such as *Olmstead v. United States*, 277 US 438 (1928), held that Fourth Amendment rights applied in cases of *physical intrusion*, but not to other forms of police *surveillance* (e.g., wiretaps).

In *Silverman v. United States*, 365 US 505 (1961), the Court stated of the amendment that "at the very core stands the right of a man to retreat into his own home, and there be free from unreasonable governmental intrusion."

The Reasonable Expectation of Privacy

Moreover, a "search" occurs for purposes of the Fourth Amendment when the government violates a person's "**Reasonable Expectation of Privacy**."

In *Katz v. United States*, 389 US 347 (1967), the Supreme Court expanded that focus to embrace an individual's right to privacy, and ruled that a search had occurred when the government wiretapped a telephone booth using a microphone attached to the outside of the glass. While there was no physical intrusion into the booth, the Court reasoned that:

"Katz, by entering the booth and shutting the door behind him, had exhibited his expectation that "the words he utters into the mouthpiece will not be broadcast to the world"

The two-prong test, adopted in *Smith v. Maryland*, 442 US 735 (1979), for determining whether the Fourth Amendment is applicable in a given circumstance provides:

1. A person "has exhibited an actual (subjective) expectation of privacy"; and
2. Society is prepared to recognize that this expectation is (objectively) reasonable.

Exceptions

The government may not detain an individual even momentarily without **Reasonable and Articulate Suspicion**, with few exceptions.

In *Delaware v. Prouse*, 440 US 648 (1979), the Court ruled a Police Officer made an illegal seizure when he stopped an automobile and detained the driver in order to check his driver's license and the automobile registration unless the officer had **Articulate And Reasonable Suspicion** that a motorist is unlicensed or that an automobile is not registered, or either the vehicle or an occupant is otherwise subject to seizure for violation of law.

A motor vehicle exception, however, was first established by the United States Supreme Court in 1925, in *Carroll v. United States*, 267 US 132 (1925). *The motor vehicle exception allows an officer to search a vehicle without a Search Warrant as long as he or she has Probable Cause to believe that evidence or contraband is located in the vehicle.* The exception is based on the idea that there is a **Lower Expectation of Privacy** in motor vehicles due to the regulations they operate. Additionally, the ease of mobility creates an inherent exigency to prevent the removal of evidence and contraband.

The Exclusionary Rule

The [Exclusionary Rule] provides that evidence obtained through a violation of the Fourth Amendment is **Generally Not Admissible** by the prosecution during [a] defendant's criminal trial. The Court adopted the exclusionary rule in *Weeks v. United States*, 232 U.S. 383 (1914), prior to which all evidence, no matter how seized, could be admitted in court.

In *Silverthorne Lumber v. United States*, 251 U.S. 385 (1920) and *Nardone v. United States*, 308 U.S. 338 (1939), the Court ruled that leads or other evidence resulting from illegally obtained evidence are also inadmissible in trials.

Always feel welcome to contact me directly with any questions, comments, or great ideas!

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ADVOCACY



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