

Third & Fourth Amendments

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(1791)

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“The test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application. In each case it requires a balancing of the need for the particular search against the invasion of personal rights that the search entails.”

—Justice William H. Rehnquist,
Bell v. Wolfish (1979)

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WHAT IT SAYS

[Third Amendment] No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

[Fourth Amendment] 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.

WHAT IT MEANS

The Third and Fourth Amendments are intended to protect citizens’ rights to the ownership and use of their property without government intrusion. The men who drafted the Constitution, like many other citizens of their era, were resentful of the pre-Revolutionary laws that allowed British soldiers to use private homes for their barracks. The Third Amendment therefore bars the government from forcing individuals to provide lodging, or quarters, for soldiers in their homes, except under very extreme circumstances when national security may override individuals’ right to privacy.

The Third Amendment has never been the subject of a Supreme Court decision and has rarely been addressed in federal court cases. The Third Amendment has instead been cited by courts as evidence that the Constitution created a general right of privacy for individuals, to protect them from government intrusion into their personal affairs.

The Fourth Amendment protects people against unreasonable searches and seizures by government officials. A “search” can mean everything from being “frisked” by a police officer to taking a blood test to having one’s home and car examined. A “seizure” refers to the government taking control of something in individuals’ possession, including the individuals themselves. Items that are “seized” are often used against a person as evidence at trial.

As a general rule, before police can search anyone’s property they must go to the courts for a warrant, which is granted on probable cause of finding evidence of a crime. The Fourth Amendment also suggests that some searches may be reasonable without a warrant. For instance, a car stopped for speeding can be subject to search if the police observe evidence of illegal narcotics. But the courts will not accept evidence seized without a warrant when the police stop cars randomly for safety purposes to check drivers’ licenses.

The Fourth Amendment also protects people against arbitrary arrest. The courts will not accept as evidence a confession taken from a person who is being held in custody illegally, nor consider evidence that is col-

lected as a result of unlawful arrest. However, there are certain “special needs” for which the courts have allowed searches without warrants, because they meet the constitutional requirement of reasonableness. For instance, prison authorities may search prisoners and their cells for weapons, school authorities may search students and their lockers for drugs, and airport authorities may search passengers and their luggage for explosives.

The invention of electronic eavesdropping equipment in the twentieth century complicated the definition of “search.” At first the Supreme Court accepted evidence gathered by wiretapping, declaring it outside the Fourth Amendment’s protections, as it involved no physical trespassing of a person’s property, and that simply overhearing evidence was not a “seizure.” But, Congress, in writing the Federal Communications Act of 1934, specifically prohibited the government from wiretapping without a warrant. And, in later years, the Supreme Court concluded that the Fourth Amendment protections went beyond “physical intrusion” and included evidence collected electronically.

The Fourth Amendment has been frequently cited as evidence that the Constitution recognizes the right to privacy, that is, people have a right to be “secure” from the government with regard to their bodies, homes, papers, and other effects.

SEARCH AND SEIZURE

On Halloween afternoon in 1963 a Cleveland plainclothes police officer was walking his beat when he spotted two men, Richard Chilton and John Terry, standing on a corner. The men walked a short distance down the road, looked in a store window, and then continued a few feet farther before turning around and returning to the corner, where they held a brief discussion. The two men repeated this pattern twenty-four times as the officer watched them. A third man approached them, talked with them, and then walked away. Chilton and Terry followed this third man, joining him a few blocks away. The officer suspected them of preparing to hold up the store, and approached them, identified himself, and asked for their names. The men only mumbled, fueling the officer’s suspicions.

Fearing that the men were armed, the officer frisked the outside of Terry’s clothing and found a gun. He then patted down the other two men and found a weapon in Chilton’s coat. He brought all three men to the police station, where Terry and Chilton were charged with carrying concealed weapons. At their trial, Terry and Chilton argued that the weapons had been “seized” as the result of an “unreasonable search” in violation of the Fourth Amendment. They contended that the search was “unreasonable” because the officer lacked “probable cause” to believe that they were carrying guns. Because the search was improper, they argued, the guns should be excluded from the evidence against them. The trial judge rejected this argument, admitted the guns into evidence, and Terry and Chilton were found guilty. They appealed their convictions, eventually to the U.S. Supreme Court. In *Terry v. Ohio* (1968), the Supreme Court agreed that the searches of Terry and Chilton had been “reasonable” under the Fourth Amendment, and upheld their convictions. This type of “stop and frisk” of a suspect is now known to law enforcement officials as a “Terry stop.”

Third & Fourth Amendments

The Supreme Court finds that the police conducted an illegal search and seizure

→ 1914

Without a search warrant, the police enter a man's home and take private documents that are then used to convict him of sending lottery tickets through the mail. In *Weeks v. United States* (1914) the Supreme Court unanimously rules that the police seizure of Weeks's belongings violated his constitutional rights and that the government further violated the Fourth Amendment when it refused to return his possessions.

States are bound by the Fourth Amendment

→ 1949

Fourth Amendment protections against unreasonable searches and seizures apply to officers of state governments (such as police officers or school officials) as well as to officers of the federal government, the Supreme Court decides in *Wolf v. Colorado*.

The "Exclusionary Rule" is applied to the states

→ 1961

In *Mapp v. Ohio*, the Supreme Court applies the Fourth Amendment to the states. It holds that evidence obtained in an illegal search and seizure is not admissible at a state trial, as well as a federal court trial. This principle is commonly known as the Exclusionary Rule, because it excludes illegally gathered evidence.

Courts prohibit the eviction of strikers for soldiers

→ 1982

In the only federal court ruling on an alleged violation of the Third Amendment, the U.S. Court of Appeals for the Second Circuit, in *Engblom v. Carey*, rules in favor of seventy guards in a New York State prison. The guards had been evicted from their employee residences on the prison grounds while they were on strike, and the state prison had given their houses as temporary quarters to the National Guardsmen called in to keep the peace during the strike. The court saw the guardsmen as equivalent to "soldiers" and ruled that the prison guards enjoyed a right to privacy in their residences, even if the prison owned their housing.

Evidence can be accepted on "good faith"

→ 1984

The Supreme Court recognizes a "good faith" exception to the Exclusionary Rule in *United States v. Leon*, allowing police to use evidence that was obtained with a warrant issued in good faith but later found to be invalid.

Aerial surveillance of homes is legal

→ 1986

Acting on a tip and without a warrant, a police officer flew a plane over the backyard of a suspected marijuana dealer and observed and photographed marijuana plants growing in the yard. Attaching his pictures of the yard as evidence, he obtained a warrant for the search of the home. The homeowner argues that the officer's aerial surveillance was an illegal search under the Fourth Amendment, but fails to get the evidence excluded and pleads guilty to the charges. The Supreme Court in *Ciraolo v. California* does not find the flight to be an illegal search. Even though the homeowner had erected a tenfoot fence to maintain his privacy, the court concludes that he had no reasonable expectation of privacy when the yard remained "knowingly exposed" to observation by the naked eye from an aerial view.

TIMELINE

A general right to privacy is recognized

1965

Addressing a state law that prohibited married couples from purchasing contraceptives, the Supreme Court, in *Griswold v. Connecticut*, rules that the Constitution gives individuals a “zone of privacy.” In reaching this decision, the Court lists various constitutional provisions, including the Third, Fourth, and Ninth Amendments, as evidence that the framers intended such a right of privacy to exist, even though the Constitution does not contain a specific reference to that right.

People have a reasonable expectation of privacy

1967

In *Katz v. United States*, the Supreme Court rules that a criminal defendant’s Fourth Amendment right to be free from unreasonable search and seizure was violated when, without a warrant, police wiretapped a public phone booth used by the defendant. The Court also cites the Third Amendment (along with the First and Fifth) to find that individuals enjoy a general right to be free from government involvement in their private affairs.

Police can search suspects when they have reasonable suspicion

1968

Whenever possible, the police should obtain a warrant before conducting a search of a person or his or her property. In *Terry v. Ohio*, the U.S. Supreme Court recognizes an exception to the general rule, allowing that the police may “pat down” the outside of a suspect’s clothing and search the immediate area for weapons when they have a “reasonable suspicion” of illegal activity.

U.S.A. Patriot Act is passed

2001

In the aftermath of the terrorist attacks on September 11, 2001, Congress passes the U.S.A. Patriot Act to enable capture of those responsible for the attacks and prevent future attacks. The act provides for a dramatic expansion of the federal government’s authority to monitor suspected terrorists’ communications (including those made by e-mail and telephone), and to obtain online records such as organization membership lists and individuals’ purchases.

Schools may conduct random student drug testing

2002

In *Vernonia School District v. Acton* (1995) the Supreme Court finds that a school district’s policy requiring students participating in interscholastic sports to consent to random drug testing does not violate the Fourth Amendment. The Court stipulates that the use of random testing requires a balancing of a student’s privacy with the school’s legitimate interest in protecting students from harm. It expands upon that decision in *Board of Education v. Earls* (2002), which finds that an Oklahoma school district’s policy of random drug tests for student participants in non-athletic extracurricular activities was also permissible.

The government cannot imprison suspected terrorists indefinitely

2003

The United States detains suspected terrorists at Guantanamo Bay, Cuba. In *Padilla v. Rumsfeld*, the U.S. Court of Appeals cites the Third Amendment in its finding that President George W. Bush lacks the authority to keep accused terrorist José Padilla confined indefinitely, reasoning that although the Constitution has a few specific grants of special authority to Congress that allow it to override individual rights—e.g., the Third Amendment’s provision for housing soldiers in private homes during war—it makes no such grants of authority to the President.