PRIVACY AND THE FOURTH AMENDMENT

THE AP-LS STUDENT COMMITTEE

MARCH 8, 2018
OVERVIEW

Introduction to the Fourth Amendment
- Criminal Procedure Generally
- Legal Analysis: An Overview

Fourth Amendment Analysis
- Violation?
- Remedy?
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...”
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WELL...

I can tell you all about the criminal process...!
STEPS IN THE PROCESS

1. The Crime
2. The Investigation
3. The Arrest
4. Booking
5. Initial Charging Decision
6. Complaint
7. First Appearance
8. Preliminary Hearing
9. Grand Jury Review
10. Filing of Indictment or Information
11. Arraignment
12. Pretrial Discovery, Motions, Plea Negotiations
13. Trial
14. Sentencing
15. Appeal
16. Post-Conviction Petitions
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Pre-trial motion to suppress
FOURTH AMENDMENT

**Nature of the right:**

Protects against *arbitrary* invasions of rights

- Prohibits *unreasonable* activity
- Limited to constitutionally protected area[s]

**Steps of Analysis:**

1. Is the Fourth Amendment *violated*?
   - Triggering event?
   - Unreasonable?
2. What is the remedy?
   - Exclusionary rule?
     - Good faith exception?
IS THE 4\textsuperscript{TH} AMENDMENT VIOLATED?

STEPS

1. IS THERE A FOURTH AMENDMENT EVENT?
2. IS THE EVENT (SEARCH OR SEIZURE) UNREASONABLE?
IS THE 4th AMPENDMENT VIOLATED?

STEPS
1. IS THERE A FOURTH AMENDMENT EVENT?
2. IS THE EVENT (SEARCH OR SEIZURE) UNREASONABLE?
IS THERE A FOURTH AMENDMENT EVENT?

1. Who is acting?
   - State Actor

2. Nature of state actor’s conduct?
   - Is there a search?
   - Is there a seizure?
STATE ACTOR DOCTRINE

1. Who is acting?
   - State Actor

2. Nature of state actor’s conduct?
   - Is there a search?
   - Is there a seizure?
BASIC LEGAL ANALYSIS

HOW TO IRAC
BASIC LEGAL ANALYSIS

**Issue:** Statement of the legal issue being considered
BASIC LEGAL ANALYSIS

**Issue:** Statement of the legal issue being considered

**Rule:** Statement of the relevant rule of law
BASIC LEGAL ANALYSIS

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**Rule:** Statement of the relevant rule of law

**Analysis:** Application of the relevant rule of law to the facts of the case
**BASIC LEGAL ANALYSIS**

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**Conclusion:** An answer to the legal issue
BASIC LEGAL ANALYSIS

**Issue:** Statement of the legal issue being considered

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**Conclusion:** An answer to the legal issue
IS THE FOURTH AMENDMENT TRIGGERED?

1. Who is acting?
   - State Actor

2. Nature of state actor’s conduct?
   - Is there a search?
   - Is there a seizure?
IS THE FOURTH AMENDMENT TRIGGERED?

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Fourth Amendment Search is _______________.

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**Note:** The phrase “Fourth Amendment Search is _______________” is indicative of a space that needs to be filled with a judgment or action based on the preceding questions. This is a common structure in legal education to prompt students to think critically about the application of the Fourth Amendment in various scenarios.
WHAT IS A “SEARCH”? 

Webster’s Dictionary

“To look over or through for the purpose of finding something; to examine by inspection”
WHAT IS A “SEARCH”? 

Webster’s Dictionary

“To look over or through for the purpose of finding something; to examine by inspection”

Kyllo v. U.S.
WHAT ACTIVITY?

• Touching or entering property

• Activity that invades a “reasonable expectation of privacy”
  
  (Katz v. US, 1960)

Two-part Test:
WHAT ACTIVITY?

• Touching or entering property

• Activity that invades a “reasonable expectation of privacy”
  
  (Katz v. US, 1960)

Two-part Test:

1. “an actual expectation of privacy” (Subjective)

2. “one that society is prepared to recognize as ‘reasonable’” (Objective)
WHAT IS A “REASONABLE EXPECTATION OF PRIVACY”? 

1. “an actual [subjective] expectation of privacy”
2. “one that society is prepared to recognize as [objectively] ‘reasonable’”
Reasonable Expectation of Privacy

- Expect privacy
- Reasonable

Search
Reasonable Expectation of Privacy

- NOT Private
- Unreasonable

- Expect privacy
- Reasonable
Reasonable Expectation of Privacy

- NOT Private
- Unreasonable

- Expect privacy
- Reasonable
IS THE FOURTH AMENDMENT TRIGGERED?

1. Who is acting?
   - State Actor

2. Nature of state actor’s conduct?
   - Is there a search?
   - Is there a seizure?

Fourth Amendment Search is any investigatory activity or physical trespass by a government actor into an area where a person has a reasonable expectation of privacy.
IS THE FOURTH AMENDMENT TRIGGERED?

1. Who is acting?
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2. Nature of state actor’s conduct?
   - Is there a search?
   - Is there a seizure?

Fourth Amendment Seizure is _______. 
WHAT IS A “SEIZURE”? 

Property

- Interference with possession
WHAT IS A “SEIZURE”? 

Property

- Interference with possession

Person

- Interference with a liberty interest
- Not all police-citizen contact amounts to a seizure

Test:

1. If a *reasonable* person would *feel free to leave*
2. Under the *totality of the circumstances*
WHAT IS A “SEIZURE”? 

“Mere Questions”

• Free to leave

Arrest

• Physical restraint
• Not Free to leave
WHAT IS A “SEIZURE”? 

“Mere Questions”

• Free to leave

Traffic stop

• Not Free to leave

Legitimate traffic stop is lawful seizure
• “Terry Stop”
IS THE FOURTH AMENDMENT TRIGGERED?

1. Who is acting?
   - State Actor

2. Nature of state actor’s conduct?
   - Is there a search?
   - Is there a seizure?

Fourth Amendment Seizure is when based on the “totality of the circumstances” a reasonable person would not feel free to leave.
OUR DRIVE TO AP-LS

Facts:
- Driving from Lincoln, NE to Memphis, TN
  - With drugs
- Driving through the Mark Twain National Forest
- Pulled over for going 70 mph in a 65 mph zone
- Stop the car
- Officer asks:
  - License and registration
  - For all to get out of the car
- Officer searches trunk and suitcases
- Finds my drugs
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Is the Fourth Amendment Triggered?
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IS THE 4TH AMENDMENT VIOLATED?

STEPS
1. IS THERE A FOURTH AMENDMENT EVENT?
2. IS THE EVENT (SEARCH OR SEIZURE) UNREASONABLE?
ARE THE REQUIREMENTS OF THE AMENDMENT SATISFIED?

With a Warrant: Reasonable!
  • Warrant clause requirements satisfied?
    ▪ Issued by Neutral Magistrate
      ▪ Probable cause
      ▪ Particularity

Without a Warrant: Presumed unreasonable...
  UNLESS
    ▪ Exception applies
WHAT IS PROBABLE CAUSE TO SEARCH?

Level of certainty required for a warrant to be issued or a warrantless search to be justified

Standard:
Under the totality of the circumstances

Test:
1.) Fair probability
2.) Evidence of a crime (fruits, instrumentalities, etc.)
3.) Will be found in the place to be searched
WHAT IS PROBABLE CAUSE TO SEIZE?

Level of certainty required for a warrant to be issued or a warrantless seizure to be justified

Standard:

Under the totality of the circumstances

Test:

1.) Fair probability
2.) That a crime occurred
3.) Person or property to be seized committed or is evidence of the crime
ARE THE REQUIREMENTS OF THE AMENDMENT SATISFIED?

With a Warrant: Reasonable!
- Warrant clause requirements satisfied?
  - Issued by Neutral Magistrate
  - Probable cause
  - Particularity

Without a Warrant: Presumed unreasonable...
  UNLESS
  - Exception applies
WITHOUT A **WARRANT**

**Exceptions:**

1. Search incident to a lawful arrest
2. Plain view
3. Hot pursuit or exigent circumstances
4. Consent
5. Stop and Frisk (Terry stop)
6. ”Automobile” Exception
WARRANTLESS

Exceptions:

a) Search incident to a lawful arrest
b) Plain view
c) Hot pursuit or exigent circumstances
d) Consent
e) Stop and Frisk (Terry stop)
f) ”Automobile” Exception

Standard:

Under the totality of the circumstances

Test:

Specific for each exception
PLAIN VIEW

Justification:

• No reasonable expectation of privacy to what is readily exposed to the public
• Cannot expect police to avert their eyes

Test:

• Police are legally authorized to be on the premises;
• Discover evidence of a crime or contraband;
• In plain view; and
• Have probable cause to believe that the item is evidence of a crime or contraband
“AUTOMOBILE” EXCEPTION

Justification:

• Mobility threatens access to any evidence and increases exigency;
• Lesser expectation of privacy due to windows; and
• Subjected to pervasive regulation of all vehicles traveling on public roads.

Test:

If probable cause to search the vehicle officers can search the entire vehicle and all the containers inside the vehicle that might reasonably contain the object or items for which they are searching.
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Is the Fourth Amendment Violated?

1. Who is acting?
   - State Actor ✓

2. Nature of state actor’s conduct?
   - Is there a search? ✓
   - Is there a seizure? ✓

3. Is the conduct reasonable?
   - Valid warrant?
   - If no, exception?
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3. Is the conduct reasonable?
   - Valid warrant? X
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WHAT IS THE REMEDY?

DOES THE EXCLUSIONARY RULE APPLY?
EXCLUSIONARY RULE

Illegally seized evidence and evidence found following an illegal search or seizure cannot be used in a criminal trial

Justification:

• Deter police misconduct
• Judicial integrity
EXCLUSIONARY RULE

Illegally seized evidence and evidence found following an illegal search or seizure cannot be used in a criminal trial

BUT...

Justification:
- Deter police misconduct
- Judicial integrity
LIMITATIONS

Exclusion of tainted evidence is not automatic

Case-by-case balancing test

- Culpability of police
  - Likelihood of deterrent effect on future police conduct
- Probative value of the evidence
GOOD FAITH EXCEPTION

Exclusionary rule will not be enforced if:

- Reasonable good faith that in accord with the 4th amendment

Test:

- Under the totality of the circumstances
- A reasonably well-trained police officer would have objectively known the search or seizure was illegal

Sometimes, the defense of good faith may be easier to decide than the merits. Even so, the merits of the Fourth Amendment claim must be resolved first.
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4. What remedy?
   - Exclusionary rule?
   - Good faith?
FOURTH AMENDMENT: IT'S A MESS

fruit of the poisonous tree
totality of the circumstances
reasonable suspicion
automobile exception
reasonable
public safety exceptions
consent
exclusionary rule
expectation of privacy
probable cause
hot pursuit
plain view
WHAT ABOUT THE FOURTH AMENDMENT?

How important can the Fourth Amendment be?
– It came in fourth.
THANK YOU

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