

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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ISSUE, BUT UPON PROBABLE CAUSE, SUPPORTED BY OATH OR
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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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STEPS IN THE PROCESS

1. The Crime
2. The Investigation
3. The Arrest
4. **Pre-trial motion to suppress**
5. Initial Charging
6. Complaint
7. First Appearance
8. Preliminary Hearing
9. Grand Jury Review
10. Filing of Indictment or Information
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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 4TH AMENDMENT **VIOLATED?**

STEPS

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

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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

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BASIC LEGAL ANALYSIS

HOW TO IRAC



BASIC LEGAL ANALYSIS

Issue: Statement of the legal issue being considered



BASIC LEGAL ANALYSIS

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Rule: Statement of the relevant rule of law



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Fourth Amendment Search is _____.



WHAT IS A “**SEARCH**”?

Webster’s Dictionary

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

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“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?

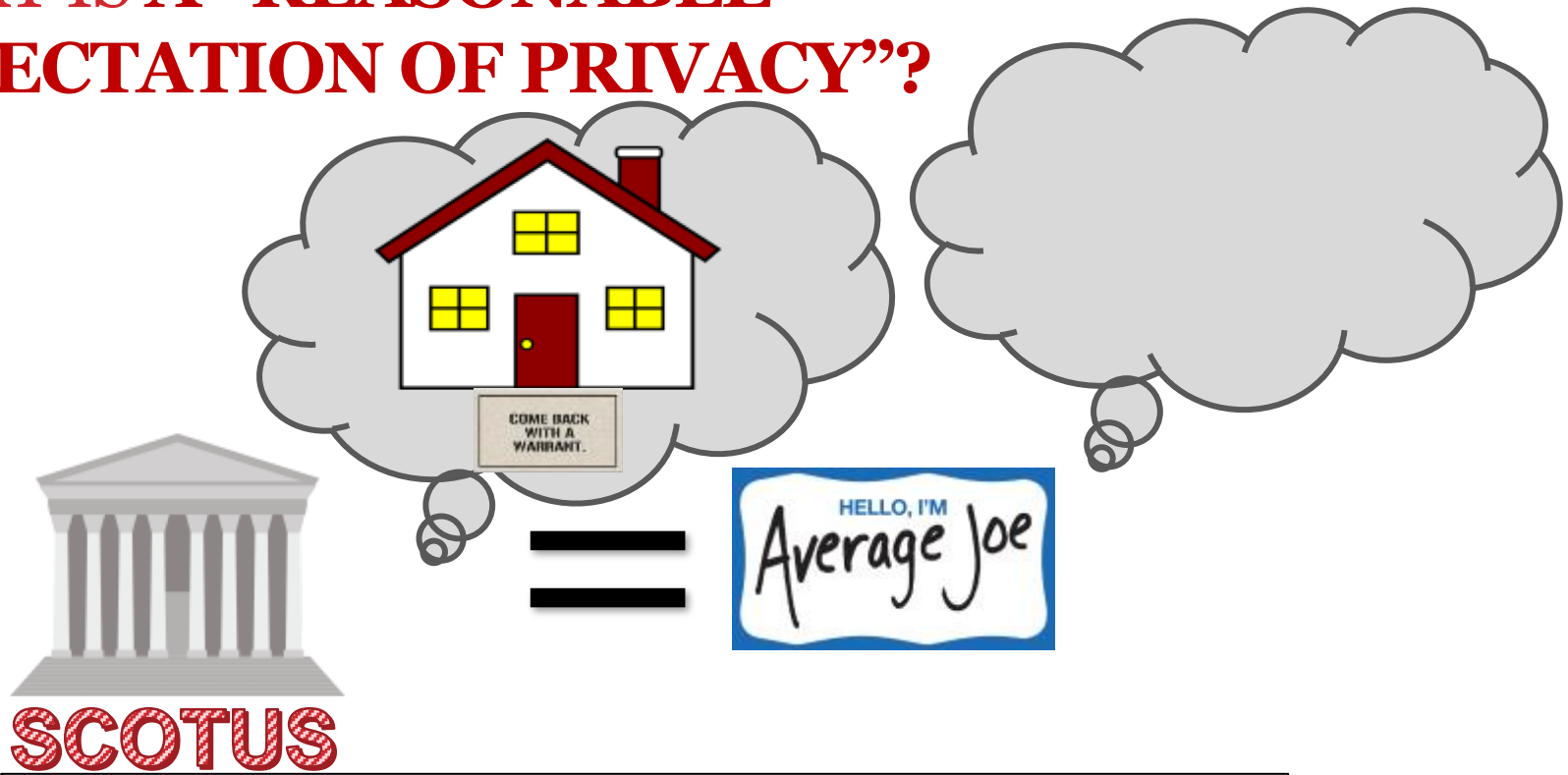
- Touching or entering property
- Activity that invades a “**reasonable expectation of privacy**”

(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?

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2. Nature of state actor's conduct?

- Is there a search?
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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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- 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”?



- **Free** to leave

- **Physical restraint**
- **Not Free** to leave

WHAT IS A “SEIZURE”?



Legitimate traffic stop is **lawful** seizure

- “Terry Stop”

IS THE FOURTH AMENDMENT **TRIGGERED**?

1. Who is acting?

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2. Nature of state actor's conduct?

- Is there a search?
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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
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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!

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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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1. Who is acting?

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- Is there a seizure? ✓

3. Is the conduct reasonable?

- Valid warrant?
- If no, exception?

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- 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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- If no, exception? ✗

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

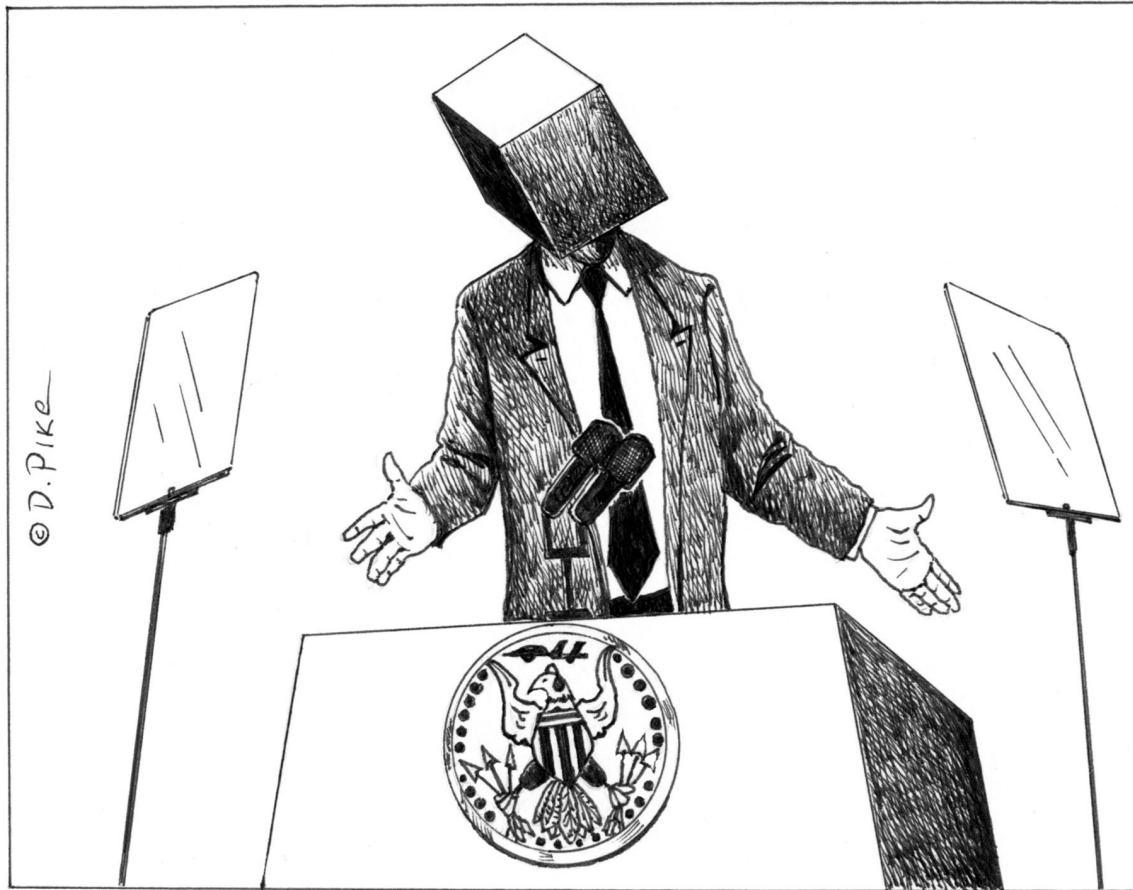
consent ^{hot pursuit} expectation of privacy

exclusionary rule

probable cause

plain view

WHAT ABOUT THE FOURTH AMENDMENT?



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

THANK YOU

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