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A Brief History of the Right Against Searches and Seizures of Evidence

The Fourth Amendment, which prohibits “unreasonable searches and seizures” and lays the groundwork for obtaining a warrant, is considered by some to be the most vital of the criminally accused in the Bill of Rights. This is not without reason; without protection against government intrusion, other rights, such as against self-incrimination, would be meaningless if the government could simply look for and seize whatever evidence it pleased. It has even laid the groundwork for a right to privacy that has extended outside of criminal matters, as per *Griswold v. Connecticut* (Epstein and Walker) *.* However, the Fourth Amendment was not immediately the broad, comprehensive protector against government intrusion that it is today; instead, it started out as a mere skeleton that has been built by the Supreme Court case after case.

The Fourth Amendment’s protection against unreasonable searches and seizures finds its roots in English common law, particularly in *Saman’s Case* in 1603 (4 years before the founding of Jamestown), a case which articulated what has become known as the Castle Doctrine- a homeowner has the right to defend his own property from intrusion, including agents of the monarch. However, the case also articulated that government agents could lawfully intrude on someone’s home if they were given proper authority (“History and Scope”). This system of obtaining proper authority became the warrant system, in which the executives of the government, typically the king himself, issued a warrant that legalized a search. A century in a half later, the warrant system came under fire in *Entick v. Carrington*, where Entick had his home and all his personal papers searched due to a general warrant issued by George III. Due to this search, Entick was arrested on charges of writing libelous content about the king. In court, however, the judge reprimanded the warrant on three points: it was not made on the basis of probable cause for Entick’s criminality; it did not specify which items were to be sought after in a search; and it allowed seizure of all of Entick’s papers, not just those criminal in nature (“History and Scope”). Due to this case, warrants now had to be specific as to what items were being sought after, those items had to be criminal in nature, and the warrant had to be justified by probable cause.

The British colonists in America expected this system for warrants to apply to their side of the Atlantic. As such, they challenged the legality of a general warrant issued by George III to stop smuggling which allowed British officers to search any home in America to find “prohibited and unaccustomed goods” (“History and Scope”). English courts, however, refused to extend the protection against unreasonable searches and seizures to the colonists; ire over these decisions contributed to the already-heated tensions between the colonists and the British government in the years before the American Revolution. Evidence of the colonists’ anger over this matter is likely found in the Declaration of Independence itself, where Thomas Jefferson writes “[George III] sent hither swarms of Officers to harrass our people, and eat out their substance” (Hewitt & Lawson). Furthermore, Samuel Adams credited the debate over general warrants the “[c]ommencement of the Controversy between Great Britain and America” (Epstein & Walker). In response to this grievance, the Americans, after gaining independence, codified their desired system of searches and seizures into law with the Fourth Amendment, ratified with the rest of the Bill of Rights on December 15, 1791 (N.B.: During the period of the Articles of Confederation, the federal government had no executive power, and therefore no ability to search citizens’ property at all) (Hewitt & Lawson).

Despite the central nature of searches and seizures in collecting physical evidence, the details of the Fourth Amendment largely remained uncontested in federal court until *Olmstead v. United States* in 1928, in which the Supreme Court defined the scope of a “search” according to the Fourth Amendment (Epstein & Walker). In this case, Olmstead’s telephone lines were tapped by ATF officers, who did not set foot in his office or home to listen to his communications. Due to evidence collected from the phone taps, Olmstead was convicted of bootlegging alcohol; Olmstead appealed, arguing the phone tapping constituted an illegal search. The Supreme Court, however, disagreed, saying the Fourth protects only “material things- the person the house, his papers or his affects”. In addition, the Court established the “physical penetration” rule- the officers must physically trespass on the bounds of the above-listed areas for the Fourth Amendment to apply (Epstein & Walker).

Despite the Fourth Amendment’s large detail about the procedure of how to conduct a valid search, it fails to directly answer what should happen if incriminating evidence is illegally obtained despite the prohibitions. The Supreme Court answered this question in *Weeks v. United States*, in which federal officers searched Weeks’s home and seized several boxes of his personal papers without a warrant. The Court, pointing specifically to the Fourth’s language of “the right of the people to be secure against… searches and seizures”, determined that illegally-obtained evidence must be excluded from trial, and as such, cannot be used to convict the defendant, in what has been dubbed the exclusionary rule (Epstein & Walker).

Since the Fourth Amendment’s inception, it, along with the rest of the Bill of Rights, were assumed to restrict only the federal government, not any local and state governments, except where explicitly noted. With the adoption of the Fourteenth Amendment, however, the Supreme Court has reanalyzed whether the Bill of Rights would also limit the state governments, since the Fourteenth Amendment prohibits the states from “depriv[ing] any person of life, liberty, or property, without due process of law” (Hewitt & Lawson). The Supreme Court took up the question of whether protection against unreasonable searches and seizures were considered due process- and therefore guaranteed in all state cases- in *Wolf v. Colorado* in 1949. The Court agreed to incorporate the Fourth Amendment itself, including the details of its warrant requirement, but opted not to immediately incorporate the exclusionary rule (Epstein & Walker). Instead, the Supreme Court incorporated the exclusionary rule in *Mapp v. Ohio*, twelve years later, finding that as part of due process, the same rules governing federal law enforcement in searches in seizures should also govern state and local law enforcement (Epstein & Walker).

In 1967, the Supreme Court shook the foundation of what constituted a search in *Katz v. United States* (Epstein & Walker). In this case, FBI agents suspected Katz of illegal bookkeeping; expecting Katz to enter a public (but enclosed) phone booth and discuss the crime with some accomplices, the agents placed microphones outside the phone booth that could detect Katz’s conversation. After conviction, Katz appealed on the grounds that the Fourth Amendment protected a person’s privacy, not just their property, and as such, the FBI’s “search” was illegal. The Supreme Court agreed with Katz’s argument, saying that while Katz did not own the phone booth, “the Fourth Amendment protects people, not places”, overturning *Olmstead* in the process. Instead of the physical penetration rule defining a search, the Court developed a two-prong test as to what constitutes a search: Did the individual have a subjective expectation of privacy, and would society, as a whole, find that expectation reasonable? If the answer to both is yes, then the government’s actions constitute a search, and are subject to the Fourth Amendment’s requirements (Epstein & Walker). The Katz privacy test has remained the benchmark for what constitutes a search on both the state and federal level (as per *Wolf v. Colorado*) to the current day; it has even been reiterated as recently as the 2012 case *United States v. Jones*, where the Supreme Court unanimously agreed the GPS tracking of one’s automobile, even if the tracking device was located on the outside of the vehicle, constituted a search under the Fourth Amendment (Epstein & Walker).

One matter concerning the Fourth Amendment is its scope in relation to advancing technology: does the Fourth Amendment remain stagnant with 1791 levels of technology, or do the protections follow even to modern-day electronics? Under the Katz standard, the Supreme Court has almost universally favored the latter approach. The first major case to deal with the scope of the Fourth Amendment and technology was *Kyllo v. United States* in 2001 (Dressler). DEA agents suspected Kyllo of growing marijuana in his home and, knowing that cultivating marijuana indoors required specialized heat lamps, the agents monitored Kyllo’s house from the street with a then-state-of-the-art thermal imaging device. Using data from the device to see that one of the rooms in Kyllo’s home was abnormally hot, the agents obtained a warrant and searched Kyllo’s home. Kyllo claimed that the officers could still detect activity inside his home, even without physically intruding, and thus were “searching” his home through technology. The Court concurred, saying that because thermal imaging devices were not commonplace in society, Kyllo had a reasonable belief that the heat in his home was secure from being detected (Dressler). The Supreme Court reiterated this principle in *Florida v. Jardines* (2013), in which a drug detection dog of the Miami police sniffed around Jardines’s front porch and indicated that drugs were inside. The Court said that even though dog sniffs have been used in detecting evidence for hundreds of years, and dogs are commonplace in society, dogs capable of indicating the presence of drugs are exclusively handled by law enforcement, and therefore subject to the same restrains as the *Kyllo* ruling (Dressler).

The opposite matter of *Kyllo v. United States* has also been considered by the Supreme Court: whether common technology can grow beyond the protections of the Fourth Amendment. In general, the Court has extended protections to new technologies, unless they, by their very nature, demonstrate a need for warrantless searches (as with automobiles). A prime example of this holding is the 2014 case *Riley v. California* (Dressler). In this case, Riley was arrested for a weapons violation, and upon his arrest, officers seized his personal cell phone. After Riley had been secured, the officers searched through Riley’s phone, going through his contacts, numbers called, and photos, among other things. The information on the phone linked Riley to a gang-related murder, and Riley was convicted of that murder based on the information on the phone. Despite the officers’ claim that they searched his phone because of the threat of the information being virtually deleted by another user before they could obtain a warrant, the Supreme Court found the search of Riley’s phone to be unconstitutional (Dressler).

Automobiles seem to be the one exception to the technology holding, since automobiles can easily be moved in the time it would take to obtain a valid warrant, therefore making such a search warrant impractical. The Supreme Court’s first case dealing with automobiles was *Carroll v. United States* in 1925, which established the Carroll Doctrine- that automobiles have low levels of protection from searches because they can easily be moved (Epstein & Walker). Many subsequent cases expanded governments’ abilities to search automobiles without a warrant: *Chambers v. Maroney* said vehicles impounded by the policed could legally be searched as part of the inventory process; *New York v. Belton* said the passenger compartment of a vehicle could be searched upon an occupants’ lawful arrest; *United States v. Ross* and *California v. Acevedo* both said with probable cause, officers may search all parts of a car and any possible containers of evidence or contraband within (Epstein & Walker). The only major instance of the Supreme Court limiting officers’ ability to search a vehicle without probable cause has been in 2009 with *Arizona v. Gant* (Dressler). In this case, Gant was arrested for driving without a license and, after being secured in the patrol car, the law enforcement officers searched his car as per the *New York v. Belton* ruling, finding illegal drugs in his coat’s pocket, which was laying inside the car. In response, the Supreme Court rolled back the *Belton* ruling, saying that officers are only able to search incident to an arrest to ensure safety and prevent disposal of evidence, and once the suspect is secured, their ability to search the suspect’s automobile is lost (Dressler).

Similar to searching automobiles, the Supreme Court has given government authorities great latitude in searching juveniles while they are in public schools. The first such instance, in terms of the Fourth Amendment, was *New Jersey v. T.L.O.* in 1985 (Bates & Swan). In this case, a 14-year-old girl (real name censored from the court record due to her being a juvenile) was found smoking by a teacher, and was taken to the principal, who searched through the girl’s purse, finding more tobacco cigarettes and marijuana. While the defendant tried to argue that the search was unreasonable, the Supreme Court disagreed, ruling that searches in schools were legal if they were based on “reasonable suspicion”, instead of the probable cause standard for adults (Bates & Swan). Ten years later, in Vernonia School District v. Acton, the Court said that the school could impose mandatory drug testing on groups of students, even without suspicion, without this being considered an unreasonable search (Bates & Swan). The Supreme Court drew a line about what school officials were permitted to do in *Safford United School District #1 v. Redding*, in which the Court found a strip search of Redding for illegal narcotics by school officials, with little evidence to justify the search, to be unconstitutional (Bates & Swan).

In under the span of 100 years, the Fourth Amendment has been transformed from a provision without even an enforcement mechanism to a part of the Constitution that dominates nearly all law enforcement actions. Its vital role as a bulwark against the government was certainly intended by the Framers themselves; not only does the Amendment directly rise out of a controversy from the Revolutionary era, but the text of the amendment guarantees more than the British common law did, as under the Fourth, only neutral judges may issue warrants, as opposed to the chief executor of the laws. From the nation’s inception, most Americans, including the Supreme Court, have agreed that the right the people to be secure against government intrusion is one right that is fundamental crucial for liberty.

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