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Winter 2021

US Criminal Law and Procedure: Class 3 - The Fourth Amendment

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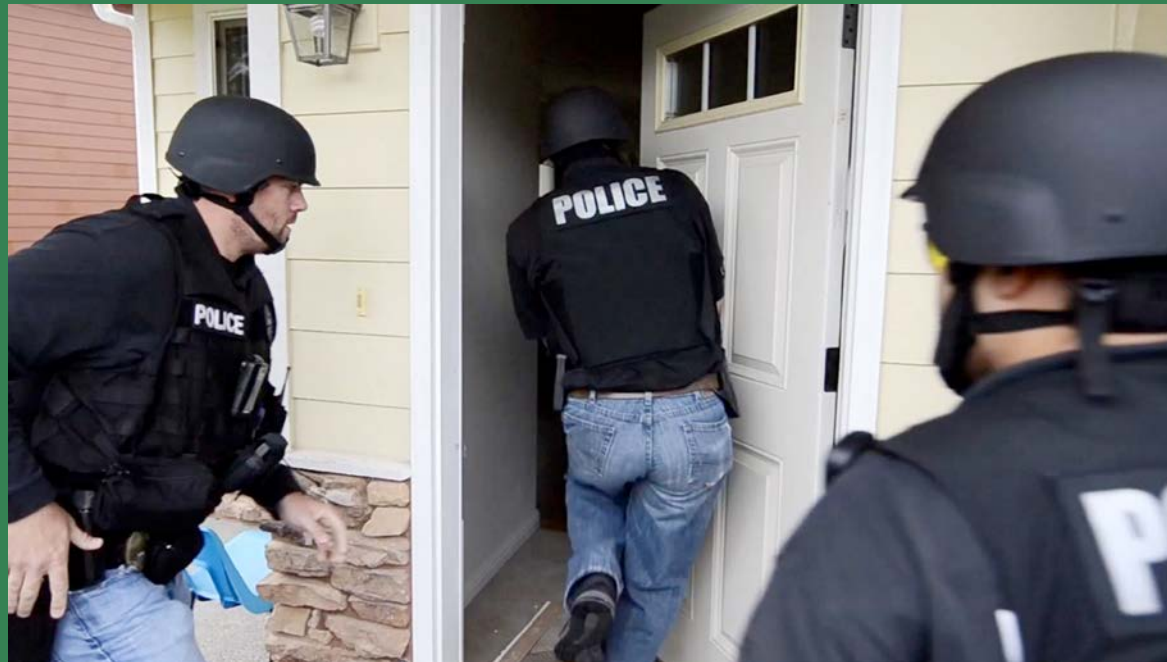
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U.S. CRIMINAL PROCEDURE: THE FOURTH AMENDMENT

Winter Semester 2021

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INTRODUCTION

U.S. criminal procedure law has a very different framework from U.S. criminal law.

Rather than being an area of regulation for the states, criminal defendant's rights are protected by the Constitution.

Both federal and state courts can determine whether government actors, including police and prosecutors, violate defendants' constitutional rights in individual cases.

However, the Supreme Court's criminal procedure jurisprudence is very extensive, so we will focus on Supreme Court cases.



INTRODUCTION

We will focus on the rights guaranteed by the Fourth Amendment, which prohibits unreasonable searches and seizures.

Amendment IV (1791)

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.

THE FOURTH AMENDMENT

Amendment IV (1791)

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.

THE FOURTH AMENDMENT

Real Talk About Fourth Amendment Rights

If they don't have a good reason to do so, the police cannot arrest you or search places or things in which you have a **reasonable expectation of privacy**.



THE FOURTH AMENDMENT

Real Talk About Fourth Amendment Rights

“Good reason” means **probable cause** to believe that a crime has been committed, or that a place or thing holds or is evidence of a crime.



THE FOURTH AMENDMENT

Black's Law Dictionary (11th ed. 2019), probable cause

PROBABLE CAUSE

Bryan A. Garner, Editor in Chief

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probable cause (16c) 1. *Criminal law.* A reasonable ground to suspect that a person has committed or is committing a crime or that a place contains specific items connected with a crime. • Under the Fourth Amendment, probable cause — which amounts to more than a bare suspicion but less than evidence that would justify a conviction — must be shown before an arrest warrant or search warrant may be issued. — Also termed *reasonable cause*; *sufficient cause*; *reasonable grounds*; *reasonable excuse*. See [DUNAWAY HEARING](#). Cf. *reasonable suspicion* under [SUSPICION](#).

THE FOURTH AMENDMENT

Real Talk About Fourth Amendment Rights

“Warrant requirement” = the default rule is that the **police need to get permission from a judge**, in the form of a **warrant**, to arrest someone or to conduct a search of a place or thing in which a person has a reasonable expectation of privacy.

SUPERIOR COURT OF CALIFORNIA
County of Contra Costa

SEARCH WARRANT

THE PEOPLE OF THE STATE OF CALIFORNIA
to any peace officer in Contra Costa County

Warrant No. MS14-600

The affidavit below, sworn to and subscribed before me, has established probable cause for this search warrant which you are ordered to execute as follows:

Place(s) to be searched: Described in Exhibit 1A, *attached* hereto and incorporated by reference.

Property to be seized: Described in Exhibit 1B, *attached* hereto and incorporated by reference.

Night service requested: [If initialed by judge] is authorized: TM

Hobbs Sealing requested [If initialed by judge] is authorized: _____

Disposition of property: All property seized pursuant to this search warrant shall be retained in the affiant's custody pending further court order pursuant to Penal Code §§ 1528(a), 1536.

9/23/14
Date and time warrant issued

X Terrell Mockler
Judge of the Superior Court

◆ AFFIDAVIT ◆

THE FOURTH AMENDMENT

Black's Law Dictionary (11th ed. 2019), search warrant

SEARCH WARRANT

Bryan A. Garner, Editor in Chief

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search warrant (18c) *Criminal law*. A judge's written order authorizing a law-enforcement officer to conduct a search of a specified place and to seize evidence. See [Fed. R. Crim. P. 41](#). — Also termed *search-and-seizure warrant*. See [WARRANT \(1\)](#).

- **general search warrant**. (18c) *Hist.* A search warrant that specifies neither the place to be searched nor a particular person to be apprehended, giving the holder almost limitless discretion. • General warrants violate the Fourth Amendment.
- **no-knock search warrant**. (1972) A search warrant that authorizes the police to enter premises without knocking and announcing their presence and purpose before entry because a prior announcement would lead to the destruction of the objects searched for or would endanger the safety of the police or another

THE FOURTH AMENDMENT

There are some exceptions to the search warrant requirement:

- **Exigent circumstances** (an emergency)
- The evidence is in **plain view**, or can **plainly be smelled** (such as marijuana in a backpack)
- A person with **apparent authority** consents to the search
- **Vehicle** searches in certain situations (because vehicles can be moved)
- Search incident to (at the same time as) a **lawful arrest**
- *Terry* **stop and frisk** (two of our groups are going to inform us further on this exception in a little while)

THE FOURTH AMENDMENT

So here is the default rule regarding searches:

The police are not allowed to search a place or thing in which you have a reasonable expectation of privacy without probable cause and a search warrant.

If they do, the state can be prohibited from using what is found in the search against you in your criminal trial, under what is known as the “exclusionary rule,” because the search violated your Fourth Amendment rights.

THE FOURTH AMENDMENT

For the rest of the class today, we are going to focus on what a **reasonable expectation of privacy** is under the Fourth Amendment.

THE FOURTH AMENDMENT

What makes an expectation of privacy reasonable?

The Supreme Court has developed a two-part test regarding whether an expectation of privacy is reasonable for the purposes of the Fourth Amendment:

1. Does the person have a **subjective** expectation of privacy?

THE FOURTH AMENDMENT

What makes an expectation of privacy reasonable?

The Supreme Court has developed a two-part test regarding whether an expectation of privacy is reasonable for the purposes of the Fourth Amendment:

1. Does the person have a **subjective** expectation of privacy?
2. Is that expectation one that society is prepared to recognize as reasonable and legitimate? In other words, is that expectation also **objectively** reasonable?

THE FOURTH AMENDMENT

If the answer to each of those questions is yes, then the expectation of privacy is reasonable.



THE FOURTH AMENDMENT

Observation:

The Fourth Amendment protects the individual's reasonable desire for privacy, which arises from the right to be let alone, the most comprehensive of rights and the right most valued by civilized men and women.⁴ The Fourth Amendment guarantees the privacy, dignity, and security of persons against certain arbitrary and invasive acts by officers of the government, without regard to whether the government actor is investigating crime or performing another function.⁵

American Jurisprudence 2d Legal Encyclopedia
68 Am. Jur. 2d Searches and Seizures § 5
Protection of Privacy Rights Under the Fourth Amendment

THE FOURTH AMENDMENT

Group Exercise: Reasonable Expectation of Privacy

For this exercise, you will be placed in one of eight groups.

Each group will be assigned a case to read.

You will have one hour to read and brief the case on your own, and then to discuss it as a group.

THE FOURTH AMENDMENT

Group Exercise: Reasonable Expectation of Privacy

Use the case briefing chart I showed you yesterday when you read and brief the case.

Here is the link to the Google doc from before. It is a read-only document, so copy the chart into your own Google doc or Word doc and work on that.

Link: <https://docs.google.com/document/d/1AsZ3R7f-IOM694vJEaigLoylH3pICN5-QTdCyDL-Gv0/edit?usp=sharing>

THE FOURTH AMENDMENT

Group Exercise #1: Reasonable Expectation of Privacy

- Groups 1 and 5: Terry v. Ohio (1968) (Your person)
https://docs.google.com/document/d/1KkBW8k_A4WS21CvaDvdJuAkLE_cV69gU9eObjEgBx_Y/edit?usp=sharing
- Groups 2 and 6: Riley v. California (2014) (Your cell phone)
https://docs.google.com/document/d/1AzsF0Ql1oKNmkJ8MalskzLSjvyuUwwhdno8s6FXqQA_U/edit?usp=sharing
- Groups 3 and 7: Kyllo v. United States (2001) (Your residence)
https://docs.google.com/document/d/1t-J8Z1uE0kMKZXf3CAKgXM847_kHKnVxTjYXJi2WHnU/edit?usp=sharing
- Groups 4 and 8: Minnesota v. Carter (1998) (Someone else's residence while you're there)
<https://docs.google.com/document/d/1sRQwVqcNQOaRD7XRypO0WmXGYkSJpsakpuAQC�B6uvM/edit?usp=sharing>

FINAL WORDS

Thank you for your attention,
your energy, and your patience
this week! You are all heroes.

Please send me an email if you
want to write the exam:
jallison@law.harvard.edu.

