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**Week 4**

**Summarize in your own words the US Fourth Amendment.**

Property rights begat all the other rights. Without the physical substances needed for life the other aspects become moot. For this a person’s home, their items, their tangible goods that they “own” are to be protected from government’s grasp. For the government to interfere with these items they ensure that pass the sniff test of being reasonable. Then when they do make it over that bar, they still must keep the invasion to a minimum. Enumerated items and specific criteria only for what they can seize or search. (U.S. Const amend IV)

**Include who the Fourth Amendment applies to and how it applies.**

Constitutional based restrictions apply only to the government and entities working under the government’s direction. So, it does not stop a person’s employer or landlord or any other such non-governmental agent. Other laws may stop them but, in those cases, the fourth amendment does not apply. This distinction is hazy around the edges and even more so when it is being tested in cases with non-citizens. So far, the case law has erred on the side that citizen status does not make a difference to scope of the Constitution.(Fisher, n.d.)

**Provide and explain at least two examples of searches without a warrant in criminal law.**

If a suspect/victim gives consent is the primary example of times when a search can be done without the need of a warrant. I use the pejorative “victim” because it is never in a person’s best interest to give the police consent to perform a search. The risk always out ways the benefit no matter how friendly the officer is or how well they tell a sad story about the search being a minor item to just clear things up. For instance, the in the Baxter County Sheriff Newsletter, Captain Jeff Lewis gives a quick overview of this type of search. (Lewis, n.d.)Underneath these words is a mountain of examples where law enforcement officials will lie, intimidate, or otherwise pressure people into agreeing to searches that are not in their best interests.

The second example is another case of splitting hairs along personal views. Searches of data that has made its way out the suspects control and into the hands of a non-governmental entitity. In Smith v Maryland, the US Supreme Court ruled that the act of dialing a phone number had no expectation to privacy therefore a pen registry fell outside of the scope of the fourth amendment. (Smith v. Maryland, n.d.) This established caselaw that has led to our current situation where data exposed to the public or non-governmental entities can be acquired by the government without respect to the individual’s fourth amendment protection. The act of dialing a number and the other metadata around the communication can be willing given over by the telephone companies. The garbage you place on the curb can be searched. Ideally the precedent established in Katz “the Fourth amendment protects people, not places” but side channel attacks have been weakening this principle over time. (Pfefferkorn, 2017)

**Explain how, when, where, and by whom a warrant is typically issued.**

How - An officer of the court or law enforcement official will petition the judge once they feel they have a strong enough argument for asking for the warrant.

When – The standard of probable cause being the bar to cross over for the argument. So once that bar is crossed and the need for the warrant is at hand that will dictate the timeline. (There are cases where it’s during the moment and cases where the warrant is issued months or more in advance.

Where – Typically these are issued whereever the Judge is petitioned for the warrant.

Whom – A judge will issue the warrant to law enforcement officials

**Explain the Exclusionary Rule associated with the Fourth Amendment.**

These are precedents that have evolved over time that curb governmental overreach on edge case situations for searches. So, in essence, evidence gathered in ways that violate a suspects constitutional rights cannot be used against the suspect. “Fruit of the poisonous tree”. Due to this rule’s organic growth over time the individual decisions that have led to our current view each make sense but when viewed in total there are some gaps that have yet to be resolved. Even if evidence attained illegally is not usable in court, what does this mean for the government’s keeping of this data in the age of cheap data storage? What about the illustrative nature in guiding the prosecution without the evidence actually being introduced into trial? The world is more complex than the narrative presented in stories such as Dirty Harry. (Exclusionary Rule, n.d.)

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