

to be monitored are exclusively between or among foreign powers and there is no substantial likelihood any “United States person” will be overheard.<sup>409</sup>

### **Enforcing the Fourth Amendment: The Exclusionary Rule**

The Fourth Amendment declares a right to be free from unreasonable searches and seizures, but how this right translates into concrete terms is not specified. Several possible methods of enforcement have been suggested, but only one—the exclusionary rule—has been applied with any frequency by the Supreme Court, and Court in recent years has limited its application.

***Alternatives to the Exclusionary Rule.***—Theoretically, there are several alternatives to the exclusionary rule. An illegal search and seizure may be criminally actionable and officers undertaking one thus subject to prosecution, but the examples when officers are criminally prosecuted for overzealous law enforcement are extremely rare.<sup>410</sup> A police officer who makes an illegal search and seizure is subject to internal departmental discipline, which may be backed up by the oversight of police review boards in the few jurisdictions that have adopted them, but, again, the examples of disciplinary actions are exceedingly rare.<sup>411</sup>

Civil remedies are also available. Persons who have been illegally arrested or who have had their privacy invaded will usually have a tort action available under state statutory or common law, or against the Federal Government under the Federal Tort Claims Act.<sup>412</sup> Moreover, police officers acting under color of state law who violate a person’s Fourth Amendment rights are subject to a suit in federal court for damages and other remedies<sup>413</sup> under a civil rights statute.<sup>414</sup> Although federal officers and others acting under color

<sup>409</sup> Foreign Intelligence Surveillance Act of 1978, Pub. L. 95–511, 92 Stat. 1797, 50 U.S.C. §§ 1801–1811. See *United States v. Belfield*, 692 F.2d 141 (D.C. Cir. 1982) (upholding constitutionality of disclosure restrictions in Act).

<sup>410</sup> Edwards, *Criminal Liability for Unreasonable Searches and Seizures*, 41 VA. L. REV. 621 (1955).

<sup>411</sup> Goldstein, *Police Policy Formulation: A Proposal for Improving Police Performance*, 65 MICH. L. REV. 1123 (1967).

<sup>412</sup> 28 U.S.C. §§ 1346(b), 2671–2680. Section 2680(h) prohibits suits against the Federal Government for false arrest and specified other intentional torts, but contains an exception “with regard to acts or omissions of investigative or law enforcement officials of the United States Government.”

<sup>413</sup> If there are continuing and recurrent violations, federal injunctive relief would be available. Cf. *Lankford v. Gelston*, 364 F.2d 197 (4th Cir. 1966); *Wheeler v. Goodman*, 298 F. Supp. 935 (preliminary injunction), 306 F. Supp. 58 (permanent injunction) (W.D.N.C. 1969), *vacated on jurisdictional grounds*, 401 U.S. 987 (1971).

<sup>414</sup> 42 U.S.C. § 1983 (1964). See *Monroe v. Pape*, 365 U.S. 167 (1961). In some circumstances, the officer’s liability may be attributed to the municipality. *Monell v. New York City Dep’t of Social Services*, 436 U.S. 658 (1978). These claims that offi-