

SEARCH AND SEIZURE

What in your life do you consider to be private? The inside of your home? The content of your phone calls?

The Constitution's Fourth Amendment governs when and how the government can invade your privacy, by placing constraints on its ability to conduct searches and seize items.

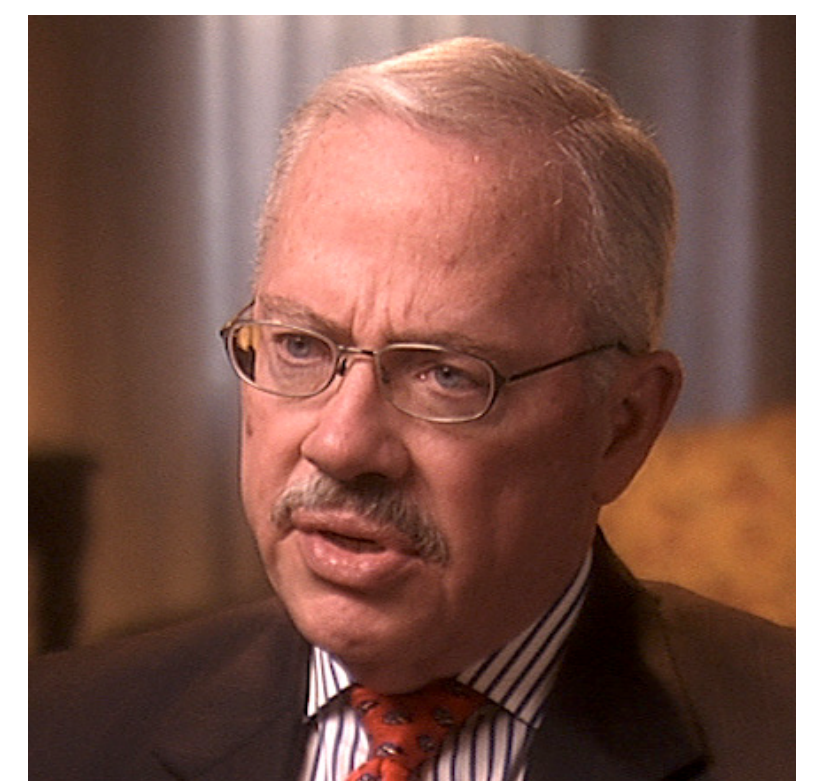


“The framers divided the power to arrest, the power to search, between two separate branches of our government. So officers do not have the right to raid anyone’s home or business whenever they think it’s a good idea. They must apply to judges by submitting applications for search warrants.” – Tim Lynch, CATO Institute

The use of warrants has long been considered a critical check on governmental search authority. As society has changed, courts have expanded the scope of what is covered by the warrant requirement - from physical spaces, to phone conversations, and most recently to e-mail. However, federal courts have also left large gaps in this understanding. For instance, no warrants are currently needed for “third party” materials such as bank records, or cloud data and related types of storage. These things can be accessed with subpoenas or court orders based upon a much lower legal standard than what a warrant requires.

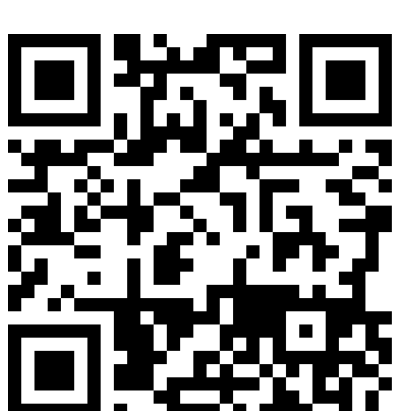
After 9/11, the Bush administration asserted its power to tap phone conversations between persons in the U.S. and persons overseas without warrants, despite the requirements of federal wiretapping laws. The administration eventually had to pull back from that position, but other broad search claims continue to persist. Police can now conduct warrantless vehicle searches within 75 miles of the US border, and the Supreme Court continues to expand the types of drug-related searches that can occur without a warrant.

“The Bush administration – or any other administration – should not be free to go ahead and gather evidence on an American citizen without following the law. And if the law says you go to a court first, then the government is obligated to do that.” – Bob Barr, former Republican congressman



Today, we stand at a critical juncture. Only a handful of years after the public was enraged over the prospect of the Bush administration's “Total Information Awareness” surveillance system, millions of people willingly upload their most personal information to the databanks of Facebook – a company with a track record of violating its own privacy policies, and subject to the lax search and seizure case law that currently governs cyberspace.

The “Facebooking” of America has long-term ramifications. A court's view of what constitutes an “unreasonable” search is based upon society's evolving expectations of what a reasonable expectation of privacy is. In an era of increasing digital disclosure by the public, how will the government come to see its powers constrained?



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