

The Fourth Amendment in the 21st Century

“Technological progress has merely provided us with more efficient means for going backwards”. English writer and philosopher, Aldous Huxley, challenged the new and coming technologies of the 18th century through a satirical piece in his book, *Ends and Means*.¹

Although a different time period, the technological advancements from the 18th century to the 21st century have continued to grow. The Internet is now an inescapable phenomenon, introducing a new need to be connected. Whether it be through phones, location trackers, or other applications, our every move is documented. But, like Huxley stated, being interconnected has its fair share of problems. With the constant updating and sharing of information, the definition of what we consider private has been stretched thin. Technology now plays a dual role; one where information can be utilized for greater advancement, or one with the potential for corruption. In order to protect the general public from exploitation, the Fourth Amendment sets the bar as to what constitutes as a unreasonable search.

1973 was the year communication changed forever.² People now had access to portable devices- and with a click of a button- could reach anyone they wanted in a matter of seconds.

¹Huxley, Aldous. *End and Means; an Inquiry into the Nature of Ideals and into the Methods Employed for Their Realization*. Chatto & Windus, 1937.

²Goodwin, Richard. “The History of Mobile Phones From 1973 To 2008: The Handsets That Made It ALL Happen.” *Know Your Mobile*, Know Your Mobile, 6 Mar. 2017, www.knowyourmobile.com/nokia/nokia-3310/19848/history-mobile-phones-1973-2008-handsets-made-it-all-happen.

Since then, many upgrades have been made to make devices slimmer, faster, and more efficient. But one thing has stayed the same: the concern for privacy. With the amount of access to information in today's world, the issue of privacy is increasingly important. To preserve people's privacy, the Fourth Amendment prohibits unreasonable searches and seizures in a person's, house, papers, and effects. The importance and effect on technological devices must be recognized, along with the importance of following procedures to protect citizens' privacy. Information obtained without a warrant is a violation of a person's digital privacy, and constitutes as an unreasonable search and seizure in the digital age.

The reliance that Americans have on digital media has gone up to 95 percent in 2018.³ Having access to technology is now considered a necessity. Chief Justice Roberts agreed, stating that "modern cell phones are not just a technological convenience. With all they contain and all they may reveal, they hold for many Americans 'the privacies of life'". The case *Riley v. California* established that the Fourth Amendment will prevent the police from reviewing the contents of a cellular device during an arrest, without first obtaining a warrant. Because of the significant part cell phones have in modern day life, the Fourth Amendment instructs the government to not search a person's phone without a warrant. The precedent set in the case protects individuals from giving out personal information without proper justification. Today, everything could be done through a phone. People check their emails, pay bills, and even run businesses through their cellular device. Information has become more condensed, making it crucial to respect and protect the privacies of American citizens.

³"Demographics of Mobile Device Ownership and Adoption in the United States." *Pew Research Center: Internet, Science & Tech*, Pew Research Center: Internet, Science & Tech, 5 Feb. 2018, www.pewinternet.org/fact-sheet/mobile/.

The Fourth Amendment is applied when someone has a “reasonable expectation of privacy”.⁴ In the case *Katz v. United States*, Katz’s privacy was violated when police wired a call made in a telephone booth. Calls have an expectation of privacy since the caller is trying to reach another person directly; meaning that the exchange should be between the caller and the receiver. With the majority of people owning cell phones and making frequent calls, it is important that what is in a call stays private. If there is a private situation, then the police must first obtain a warrant. With the amount of information and data on cellular devices, this case will be an example to protect our privacies as citizens during an arrest, and help determine the limits of our privacy in the future.

Surveillance technologies are correlated to the topic of privacy. The Fourth Amendment is applicable to the use of surveillance technologies, like the thermal imaging device in *Kyllo v. United States*. The Court stated that when “the Government uses a device that is not in general public use, to explore details of the home that would previously have been unknowable without physical intrusion, the surveillance is a 'search' and is presumptively unreasonable without a warrant.”⁵ The image of the inside of Katz’s home would have been unknown, unless someone physically intruded in on the his property; meaning it was a private space. With the rate of growth and breakthroughs in technology, it is possible that thermal imaging, x-rays, or cameras could peer into the private lives of our homes. There needs to be boundaries to protect the privacies of our homes and safe spaces, without the interference of scanners, drones, or other technologies.

⁴"Katz v. United States." *Oyez*, 6 Apr. 2019, www.oyez.org/cases/1967/35

⁵"Kyllo v. United States." *Oyez*, 6 Apr. 2019, www.oyez.org/cases/2000/99-8508.

Without consequences, there is no reason for law enforcement to follow procedures. The Fourth Amendment not only protects the rights and privacies of Americans, but also places a check on the government. The exclusionary rule prohibits evidence obtained in violation to a citizens' Fourth Amendment rights.⁶ With set boundaries in place, there is accountability. In *United States v. Jones*, the placement of a GPS device on a person's vehicle violated the Fourth Amendment not because of its expectation of privacy, but because of the trespass in procedure. The placement of the GPS device on the vehicle after the warrant expired was a trespass, constituting it as an unreasonable search. With the clear rules and procedures set, government officials will have to respect the timing of a warrant. The precedent in this case sets the bar for procedure and timeliness in a case. With accountability placed on the government, citizens do not need to worry about forcibly obtained records.

Having experienced the impact technology has had in the 21st century, I believe the Fourth Amendment is crucial to how privacy is preserved in this ever evolving age. The internet is often referred to as the web: a world wide web, linking different people and devices, collecting, and spreading information all over the world. Because of how essential technology is in the 21st century, it is important to reconsider where the boundary is drawn in order to protect one's privacy.

⁶"exclusionary rule." *West's Encyclopedia of American Law, edition 2*. 2008. The Gale Group 5 Apr. 2019 <https://legal-dictionary.thefreedictionary.com/exclusionary+rule>

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