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Baton Rouge, Louisiana

### HAS THE FOURTH AMENDMENT BEEN ROUTED?

Everyone knows a man's home is his castle – Agreed? The basic right of privacy in one's place of residence has been a fundamental founding principle in any Democratic system, going back to England in the 1600s.

William Pitt expressed this concept well in the English Parliament in 1763, "The poorest man may, in his cottage, bid defiance to all the forces of the crown. It may be frail; its roof may shake; the wind may blow through; the storm may enter; but the King of England may not enter; all his force dares not cross the threshold of the ruined tenement."

This basic privacy concept was restated last year in an editorial by the ultraconservative Washington Times, "In this country, the FBI may not enter our tenements, ruined or otherwise, unless its agents adhere to the requirements of the Fourth Amendment. That's what the Constitution says."

But the newly constituted U.S. Supreme Court feels otherwise. In a decision handed down last week, the Supremes gave the go ahead for a completely different standard that no longer require police officers to get a search warrant and knock on one's door announcing they are there to search the house.

Under the new rules, and despite what would seem to be a solid constitutional protection otherwise, there is now apparently no policy protecting the homeowner and the sanctity of his home from immediate entry by the police. No announcement, no warrant, no knocking. Use whatever means necessary to kick down the door and barge on in.

This basic right to be protected from invasion in your home was dismissed as a trivial concern by Justice Antonin Scalia, who wrote the majority opinion for the court. He found privacy rights passé' by writing that most concerned were merely arguing for "the right not to be intruded upon in one's nightclothes."

Scalia went on to say that if a homeowner felt his rights were impinged upon, he could still bring a civil lawsuit. So if your home is intruded, go hire a lawyer, and spend years in the court system trying to get some relief. In a dissenting opinion, Justice Stephen Breyer argued that for centuries, the court has recognized that when the police barge into a house unannounced, it is an assault on "the sanctity of a man's home and the privacies of life."

So, you may say, what's the big deal? If we are involved in a war on terrorism, isn't that just the price we pay to give up a few privacy rights and suspend some obscure proposition called the Fourth Amendment? After all, a lot of people don't even know what the Fourth Amendment really says. Everyone is familiar with the First Amendment (Freedom of Speech, Press and Religion), and of course the Second Amendment which is non-negotiable in our part of the country (the right to bear arms). And I learned a good lesson a few years ago about the Fifth Amendment (the right to bar any self-incrimination).

But most people cannot even remember or respond to any question about the Fourth Amendment. And you know what? It could not be clearer. Here's what it says:

*“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.”*

It reads pretty clear to me. In fact, this basic constitutional premise would seem to be right on point when the government starts gathering up everyone's telephone calls, or begins electronically fishing and doing random searches on your hard drive or in your online correspondence.

Of course, there is full justification for specific searches involving the investigation of a crime. But just because someone speaks up about their basic right to privacy and expresses deep concern about general “gathering operations,” this should not make them an unpatriotic wimp.

Sure, go get the bad guys. But if non-elected federal judges continue to chip away at these basic constitutional principles, then are we not degrading and weakening the very system of government that we are espousing all over the world?

The opinion by Justice Scalia was not particularly memorable. Nothing stands out but his weak reasoning, and the final decision itself. But in a whiff of his pen with four of the Justices to back him up, the Supreme Court tossed in the trash can a basic principle of privacy that traces its roots back to 13<sup>th</sup> century Britain. It should not be so easy.

For all practical purposes, the Fourth Amendment has now been cancelled. I'm sure Benjamin Franklin must be rolling over in his grave. You remember what Ben said, don't you? He gave us a simple premise, “Those who would give up essential liberty to purchase a little temporary safety deserve neither liberty nor safety.”

You know what, Ben? You're right on the mark.

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Peace and justice.

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Jim Brown's weekly column appears each Thursday here at PoliticsLA.com, and in a number of newspapers throughout the State of Louisiana. You can read Jim's Blog, and take his weekly poll, plus read his columns going back to the fall of 2002 by going to his own website at <http://www.jimbrownla.com>.

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