

## The Changing Face of the Police and the Death of the Fourth Amendment

Written by John W. Whitehead  
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The Fourth Amendment, which assures that “the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated,” was included in the Bill of Rights in response to the oppressive way British soldiers treated American colonists through their use of “Writs of Assistance.” These were court orders that authorized British agents to conduct general searches of premises for contraband. The exact nature of the materials being sought did not have to be detailed, nor did their locations. The powerful new court orders enabled government officials to inspect not only shops and warehouses, but also private homes. These searches resulted in the violation of many of the colonists’ rights and the destruction of much of the colonists’ personal property. It quickly became apparent to many colonists that their homes were no longer their castles.

Fast-forward 250 years and we seem to be right back where we started, living in an era of oppressive government policies and a militarized police whose unauthorized, forceful intrusions into our homes and our lives have been increasingly condoned by the courts. Indeed, two recent court decisions – one from the U.S. Supreme Court and the other from the Indiana Supreme Court, both handed down in the same week – sound the death knell for our Fourth Amendment rights.

In an 8-1 ruling in *Kentucky V. King*, the U.S. Supreme Court effectively decimated the Fourth Amendment by giving police more leeway to break into homes or apartments without a warrant when in search of illegal drugs that they suspect might be destroyed if notice were given. In this particular case, police officers in pursuit of a suspect they had seen engage in a parking-lot drug deal followed him into an apartment complex. Once there, the police followed the smell of burning marijuana to an apartment where, after knocking and announcing themselves, they promptly kicked the door in – allegedly on the pretext that evidence of drugs might be destroyed. Despite the fact that it turned out to be the

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apartment, and a violation of every tenet that stands between us and a police state, the court sanctioned the warrantless raid, saying that police had acted lawfully and that was all that mattered. Yet as Justice Ruth Bader Ginsburg, the lone voice of dissent among the justices, remarked: “How ‘secure’ do our homes remain if police, armed with no warrant, can pound on doors at will and ... forcibly enter?”

In the second case, the Indiana Supreme Court actually stepped beyond the constitutional parameters of the case before it to broadly rule in *Barnes V. State* that people don't have the right to resist police officers who enter their homes illegally. The court rationalized its 3-2 ruling legitimizing any unlawful police entry into a home as a “public policy” decision. Insisting that it would be safer for all concerned to let police proceed even with an

*illegal*

action and sort it out later in court with a civil lawsuit, the court held that residents can't resist police who enter their home – whatever the reason. The problem, of course, is that anything short of complete and utter acquiescence and compliance constitutes resistance. Thus, even the supposedly protected act of free speech – a simple “Wait, this is my home. What's this about?” – constitutes resistance.

Many are understandably up-in-arms about these decisions, but the courts are not really introducing anything new into our lives; they are merely reflecting and reinforcing the reality of the age in which we live, and that is one in which the citizen is subordinate to government and what the “state” says goes – be it the police, the schools, or local or federal agents.

Indeed, the average citizen really is helpless in the face of police equipped with an array of weapons, including Tasers. The increasing militarization of the police, the use of sophisticated weaponry against Americans, and the government's increasing tendency to employ military personnel domestically have taken a toll on more than just our freedoms. They have seeped into our subconscious awareness of life as we know it and colored our very understanding of freedom, justice, and liberty.

American society has changed. And with that change, the way the government views us, the way we view one another, and the way we view and are viewed by law enforcement have undergone dramatic transformations. We have succeeded in forfeiting one of the principles that has been a hallmark of the American republic – the idea that every person is innocent until proven guilty. This is such a simple concept, yet it undergirds some of our Constitution's greatest protections, such as the right to an attorney and a fair hearing, protection from

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unreasonable searches and seizures, and the right to privacy.

We have also witnessed a sea change in the way law enforcement views its role, from one that considered itself a servant to the people to one that sees itself as the long arm of an increasingly authoritarian government. Where law-enforcement officials once looked to us as their employers, we now too often look to them as our wardens and jailers, as something to fear – a notion they encourage.

Thus, where once there was a decided difference between the police and the military and their uses domestically, that line continues to be not only blurred but, when crossed, is actually sanctioned by the courts. But the fact remains that the American police force is *not* a branch of the military, nor is it a private security force for the reigning political faction. It is an aggregation of the countless local units that exist for a sole purpose: to serve and protect the citizens of each and every American community.

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