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LEGAL RAMIFICATIONS OF SECURITY
FOR COUNTY COURTHOUSES

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LEGAL RAMIFICATIONS OF
COUNTY COURTHOUSE SECURITY

I. Foreword

This research paper discusses the Legal Ramifications of Courthouse Security, a topic that raises sensitive issues to the Fourth Amendment of the U.S. Constitution. When members of the public enter a courthouse, whether a federal courthouse or a county courthouse, they are subject to a search of their personal belongings for the safety of all courthouse personnel. The Fourth Amendment will be discussed in detail to inform the reader about the rights of citizens entering a courthouse that has already implemented controlled security check points. Approximately eighteen federal case law citations have been researched and documented in this paper. It is instructive to read the results of litigation instigated by citizens who felt their rights had been violated, when entering a area controlled by equipment intended to detect weapons and items that might be used as weapons. Federal case law may take precedence over state law; therefore it is important for study.

What follows is the result of this writer's research into this topic that was the prelude to a security plan for the El Paso County Courthouse.

Hopefully, this research can be used by any department that may be considering the legal issues as their effect on the rights of citizens entering a county courthouse and the rights of the federal government and each county government.

II. Introduction

Recent tragic events have graphically illustrated the vulnerability of judges, bailiffs, witness, and the general public to armed attack and hostage situations within a courthouse. Courts at all levels have taken notice that threats and episodes of violence directed at courthouse personnel demonstrate an urgent need for security precautions and protective measures. As a result, individuals have been requested to submit to limited warrantless searches of their persons and possessions as a condition to their entry into public courthouses.¹

Federal case laws have determined that the federal government (consistent with the Fourth Amendment's prohibition against unreasonable searches and seizures) can make conditions regarding entry into a public courthouse, requiring that each citizen submit to the least offensive screening procedure that will detect the presence of weapons, explosives or other destructive devices.

Below are six important federal cases that determined precedent for implementing security plans at federal and county courthouses in the United States.

1. Downing v. Kunizig, 454 F. 2d 1230 (6th Cir. 1972) (Denial of entry to a Federal Courthouse unless packages submitted for examination).2
2. McMorris v. Alioto, 567 F. 2d 897 (9th Cir. 1978) (Inspection of briefcases and parcels as a condition for entry to a courthouse).3
3. Rhode Island Defense Attorney Assoc. v. Dodd, 463 A. 2d 1370 (R.I. 1983) (Parcels, objects or briefcases brought into a courthouse to be inspected for weapons).4
4. Commonwealth v. Harris, 421 N.E. 2d 447 (Mass. 1981) (Packages, briefcases or other items carried by a person must be offered for inspection before entering a courthouse).5
5. United States v. Henry, 615, F. 2d 1223 (1980) (Briefcases or other items carried by a person must be inspected before to entering an airport terminal).6
6. Barrett v. Knuzig, 331 F. Supp. 266 (M.D. Tenn. 1977) (Inspection or briefcases packages, and etc.).7

These federal case laws interact in setting precedence for courthouse security. Each case finding prevailed on its own merits when contested in court. For example, in Downing v. Kunizig, Downing refused for his personal belongings to be checked at a security check point. Feeling that his civil rights had been violated. The court decided his rights had not been violated and set precedence that affected courthouse security.

The six case mentioned, set precedence for courthouse security and airport security. Each case resulted from different situations but with similar circumstances.

III. The Evolution of Courthouse Security

In 1889, David Neagle assigned as a deputy for the Federal Courthouse shot and killed an assailant who threatened the life of supreme justice Steven Fields who was presiding over a trial. This incident prompted the United States Congress to form the United States Marshals Service to protect all federal courthouses, judicial personnel, courthouse property, and the people serving the court's pleasure. In the 1970's numerous violent incidents inspired the United States Marshals Service to take aggressive security precautions because most of the federal courthouses were not secured and were open to the public during non-business hours.⁸

On August 7, 1970, a federal judge was taken hostage, shot and killed in the parking lot of the courthouse in Meridian County. Other incidents aimed at federal judges occurred in New Jersey and Virginia. In San Antonio, Texas, federal judge John Woods was assassinated outside his home; the investigation revealed that he was killed because he was presiding over a narcotics trial. Numerous suspects were arrested and convicted for the murder of John Woods.⁹

Today, the United States Marshals Service protects approximately four hundred courthouses across the country. In the State of Texas, each county is responsible for providing its own courthouse security. Counties that have already implemented a security plan are Travis, Bexar, Harris, Tarrant, Dallas, Wichita Falls, and El Paso. More than two hundred counties in the state do not have a security plan or security personnel to adequately protect their courthouses.

The United States Marshals Service provides four types of security protection service to Federal Courthouses.¹⁰

1. Courthouse Security
2. Judicial Facility Security
3. Tactical Assistance Security
4. Protective Service Security

The services provided by the United States Marshals Service are expensive; The crime bill passed on August 24, 1994, will continue to provide the federal court system with sufficient funding to adequately maintain security services in federal courts.

The services provided in county courthouses by the individual counties are various because each county's needs and priorities are different. Security equipment such as, X-ray machines, metal detectors, cameras, TV monitors, hand-held metal detectors, and security personnel can be very expensive, and may find it difficult to fund their courthouse security.¹¹ In the El Paso County commissioners approved the necessary equipment and personnel to adequately protect and secure the Courthouse.¹²

IV. Courthouse Searches Affecting the Fourth Amendment

Among the rights protected by the Fourth Amendment to the Constitution of the United States are freedoms from unreasonable search and seizure. Any search of the person, home or automobile, for example, without "probable cause" or a valid search warrant is an invasion of privacy generally protected by the Fourth Amendment.¹³ Moreover, since the United States Supreme Court decision in Downing v. Kunizig (1973).¹³

Prior to supreme court decisions, federal courts suffered violent incidents that intensified aggressive security. The Fourth Amendment protection against unreasonable search and seizure proscribes only governmental action. It does not apply to a "search or seizure," even an unreasonable one effected by a private individual not acting as an agent of the government or with participation or knowledge by any governmental official. Providing security services at a courthouse has been characterized as a governmental function; therefore any search for weapons at a courthouse in Texas would be protected by the Fourth Amendment, since state officials have instigated and/or participated in the search. The Fourth Amendment provides that the "right of the people to be secure to their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated." A search occurs when "an expectation of privacy that society prepared to consider reasonable is violated".¹⁴

This seems to be a two part test for determining whether an individual has a constitutionally protected reasonable expectation of privacy. First, the individual must manifest a subjective expectation of privacy in the object of the challenged search and second, society must be willing to recognize the expectation as legitimate. (See California v.

Ciraolo, 106 S. Ct. 1809, 1811 (1986).¹⁵ The reasonableness of an expectation of privacy "is understood to differ according to the context" and the United States Supreme Court has recognized that there is "no talisman that determines what society is prepared to accept as reasonable" (See O'Connor v. Ortega, 107 S. Ct. 1492, 1497 (1987)). While ordinarily an individual enjoys a reasonable expectation of privacy in his personal effects, the mere placement of personal property into a closed container does not always ensure that the subjective expectation of privacy will be judge by society as legitimate. Extenuating circumstances can erode the reasonableness of the expectation to the extent that the interest is no constitutionally protected.¹⁶ Individuals who enter a courthouse having been notified that their personal effects will be inspected for weapons may not have a subjective expectation of privacy as to the contents of those objects.

Even if a defendant has a subjective expectation of privacy, in light of compelling need and limited intrusiveness, there may not always be a socially recognized legitimate expectation for privacy of objects carried into the courthouse by persons who have prior notice of search procedures.

Nonetheless, courthouse screening procedures have not been justified solely and expressly on grounds that individuals do not have reasonable expectation of privacy in the contents of the personal articles that they carry into courthouses, having been afforded notice of search procedures. Therefore, the Fourth Amendment should be deemed applicable to these situations and any search should comply with the Fourth Amendment's requirements of reasonableness.¹⁷

- a. Inspection of personal articles carried when entering a courthouse can be justified as a reasonable "Administrative Search"

A warrantless search of all persons entering a sensitive facility, such as a courthouse, conducted as part of a "general regulatory scheme in furtherance of an administrative purpose rather than as part of a criminal investigation to secure evidence," may constitute an "administrative search" deemed reasonable under the Fourth Amendment to the Constitution (Commonwealth v. Harris, 421 N.E. 2d 447, 448 (Mass. 1981)).¹⁸ To meet constitutional requirements an administrative search must meet the Fourth Amendment's standards of reasonableness which requires balancing the need to search against the invasion which the search entails.

An administrative screening search must be as limited in intrusiveness as is consistent with the administrative need which justifies it (i.e. protecting courthouse property and personnel from violence and destruction). Moreover, the search must be conducted for a purpose other than gathering evidence for criminal prosecution.

The criteria for a valid administrative search have been described as follows:

1. The search must clearly be necessary to secure a vital governmental interest such as protecting a sensitive facility from a real danger of violence by preventing illegal weapons or explosives from being taken into a building. The initial inquiry is whether a "vital state interest justifies the use of some search procedure as a condition for entering state courthouses. Justice v. Elrod 646 F. Supp. 30 (N.D. 1986).¹⁹
2. The search must be limited and no more instrusive than is the necessary to protect against danger to be avoided, but nonetheless reasonably effective to discover material sought. (All persons seeking to enter the courthouse must be afforded the option of choosing not to enter the premises rather than submitting to the search. Davis v. United States 482 F. 2d 893, 911 (9th Cir. 1973).²⁰

3. The inspection must be conducted for a purpose other than to gather evidence for criminal prosecution. The search procedure must be conducted for the sole and limited purpose of deterring violence by preventing the bringing of illegal weapons, explosives, or other destructive devices inside the courthouses. It must not be conducted to accomplish some ulterior or improper objective, nor can it be a mere subterfuge for gathering evidence to be used in criminal prosecutions.

b. Implied Consent negates Intrusiveness of Search

The Fourth Amendment protects the security of one's privacy against "arbitrary intrusion by the police". (Schneckloth v. Bustemante, 93 S. Ct. 2041, 2055 (1973)). When the subject of a search is not in custody and the state attempts to justify the search on the basis of his consent, the Fourth Amendment requires that the consent must be voluntarily given and not the result of duress or coercion, either expressed or implied. In determining the voluntary nature of consent, the court must balance the legitimate need for the search against the requirement for assuring the absence of coercion.

However, the subject's knowledge of the right to refuse consent is not a necessary alternative to demonstrating a voluntary consent. While a person submitting to a limited search for weapons as a condition for entering a courthouse might not consent to search in full, case law suggests that such a limited search for weapons can be upheld if the person searched gives what is termed "implied consent," thereby reducing the intrusiveness of the procedure. This requirement can be met if the limited regulatory search is performed only; a). after notice (as opposed to actual knowledge) of the need to submit personal articles for inspection, b). without physical coercion, and, c). with the option that the person may choose not to submit to the search by not entering the courthouse. (People v. Alba, 440 N. Y. S. 2d 230, 233 (1981)).²¹

V. Courthouse Security Equipment and Legal Issues Affecting the Fourth Amendment

Federal courts have determined that courthouse security equipment may be any equipment designed to detect weapons, explosives and any other objects that may be deemed a threat to the security of the courthouse or courtroom.

Walk-through metal detectors, X-ray machines, hand-held metal detectors, TV camera/monitors and any other equipment designed to alert security personnel to a breach of security have been authorized.

a. X-Ray scan of Personal Articles Constitutes a Reasonable Search

An X-ray scan is a search. While less intrusive than a physical search, it nonetheless reveals, to a certain extent, articles the owner has chosen to conceal from view. (United States v. Henry, 615 F. 2d 1223, 1227 (9th Cir. 1980); United States v. Haynie, 637 F. 2d 227 (9th Cir. 1980)).²² If packages and briefcases can be physically inspected as a condition of entry to a courthouse, then they can be subjected to a less intrusive X-ray scan to detect the presence of weapons and explosives. Therefore, all persons entering a courthouse can be required to submit their personal articles for X-ray prior to being allowed to enter the courthouse.

b. Officials Conducting X-ray Scans Should Not Have Unlimited Discretion

The mandate for the inspecting officer must be delineated so that all persons coming into the courthouse are indiscriminately required to place all personal articles on the X-ray conveyor belt for inspection. The official conducting the X-ray scan should not have the discretion to determine which persons and packages should be inspected. So that no one person is singled out and so that the "degree of insult to the entrant's dignity" is minimized. (Rhode Island Defense Attorneys Assoc. v. Dodd, 463 A. 2d 1372 (R.I. 1983)).

c. Use of E-Scan X-ray Equipment Is Reasonable, Since It Enhances Detection of Plastic Explosives

E-scan X-Ray equipment is being used throughout the nation in courthouses for the purpose of detecting weapons and explosive devices that may be concealed in objects taken in to the courthouse. The E-scan X-Ray machine uses a color display which, purportedly, enhances the detection and identification of weapons as well as non-metallic explosive devices.

Organic materials such as plastic explosives will be displayed in one distinctive color while non-organic materials, such as metal weapons, will be displayed in a contrasting color. Objects too dense to be penetrated, such as batteries and gun barrels, will be displayed in a third color.

Utilization of such E-scan X-Ray equipment for the sole purpose of detecting the presence of non-metallic objects such plastic explosives and other destructive devices, seems reasonable under the Fourth Amendment to the United States Constitution. In discussing the reasonableness of airport screening procedures (which have expressly been compared to courthouse searches) it has been noted that screening passengers and the articles that will be accessible to them in flight does not exceed constitutional limitations under certain circumstances. These conditions are that the screening procedures will be no more extensive or intensive than is necessary (in light of current technology) to detect the presence of weapons or explosives, that it is confined in good faith to that purpose, and that potential passenger may avoid the search by electing not to fly. (United States v. David, 482 F. 2d 893, 913 (9th Cir. 1973)).²³

d. Manual Search upon Inconclusive X-ray Scan Is Reasonable

Protective measures taken at courthouses have been expressly compared to airports attempts to thwart hijackers (McMorris v. Aloto, 567 F. 2d 897). It has been held that those passengers placing luggage on an X-ray machine's conveyor belt for airplane travel at a secured boarding area implicitly consent to a visual inspection and limited hand search of their luggage for the purpose of detecting weapons or explosives but not to disclose other types contraband.

If the X-ray scan is inconclusive in determining whether the luggage contains weapons or other dangerous objects a physical search may be performed. The detection of firearms and explosives which can be small and easily concealed would be difficult if limited to an "inconclusive X-ray scans." The scan and subsequent search involves only a slight privacy intrusive as long as the search is limited to the detection of weapons, explosives, or any other destructive devices and is conducted in a manner which produces negligible social stigma.

Therefore, once an article is placed on the X-ray conveyor belt, the individual implicitly consents to any follow-up search, and there is no need to afford the individual the opportunity to avoid any follow-up search by not entering the courthouse. (United States v. Pulido-Baquerizo, 800 F. 2d 902).²⁴

e. Search of Closed Containers Is Allowed

Since modern technology has made it possible to miniaturize or easily conceal weapons or explosives, closed containers may be opened during the course of an inconclusive X-ray inspection (United States v. Ross, 102 S. Ct. 2157, 2171 (1982)). Held the warrantless search of closed containers in vehicles and directs that when a legitimate search is underway (and its purpose and limits have been precisely defined), distinctions between closed containers and other objects to be searched must give way to the interest in "prompt and efficient completion of the task at hand".²⁵

f. Drugs May Be Seized during reasonable Search for Weapons

Drugs or other contraband seized during the course of an administrative search for weapons need not be suppressed if the administrative search is conducted for the sole and limited purpose of detecting weapons (New York v. Burger, 107 S. Ct. 2636, 2651 (1987)). Courts have expressly recognized that routine screening searches will lead to discovery of contraband and apprehension of law violators. This practical consequences does not alter the essentially administrative nature of the screening process nor render the search unconstitutional.

(Of course, if it can be shown that the screening for weapons and explosives has been subverted into a general search for evidence of a crime, the evidence obtained should be suppressed). Therefore, the determining question is whether a courthouse search is being used as a subterfuge for a prohibited general search. If it is not, once the officer conducting the search has probable cause to believe that a person is possessing drugs or other contraband, seizure of the drugs or other contraband, and arrest of the object of the search may occur (Commonwealth v. Harris, 421 N.E. 2d 449).

In Sapiro v. State, 390 So. 2d 344 (Fla. 1980) during the course of an airport screening procedure, when the defendant's suitcase was passed through the X-ray monitor, the guards at the security check point noticed something that looked like scissors. A detective who was watching the monitor, observed a grey mass which approximately 12-18 inches in length and 18 inches in width. He requested that the bag be passed through again so that the guards could get a closer look because he had a genuine fear that there was an explosive device in the suitcase. Viewing the monitor, the detective could distinguish that the mass was not opened clothing and that it might be plastic explosives.

When the suitcase was opened by the defendant so that the security guard could check the scissors, the detective saw a bulge in a pant's leg which he thought was a bomb. He, therefore, removed the pants from the suitcase. The search, rather than revealing the presence of a bomb, turned up cocaine.

In sustaining the admissibility of the cocaine, the Florida Supreme Court rejected the defendant's argument that the cocaine should have been excluded since the search was not, and could not properly have been, conducted for the purpose of discovering illicit drugs (United States v. Skipwith, 482 F. 1277.26 The strictures of the Fourth Amendment protect citizens from unwarranted and unreasonable intrusion by the government of their person or into their effects. The rule excluding the admission of illegally obtained evidence was designed to serve this purpose by removing the principle incentive because the evidence is not probative, or to chastise errant law officers, or to benefit the accused. It is important to note that what must be considered is the intrusion on a citizen's rights to be free of unreasonable searches, not upon any right to be free of criminal prosecution. Certainly, the imposition of a criminal penalty for possession of drugs found during an airport /courthouse search will burden the one upon whom it is imposed; constitutionally speaking, however, he has suffered only the same intrusion as other passengers/citizens who were searched.

Although the discovery of cocaine in a search for weapons may be unexpected by the government, there is nothing in the Constitution that gives the suspect a right to complain because the product of the protective action was not anticipated. Such a result cannot properly be classified as a windfall; it is the product of valid police work. The government has no duty to apprehend a drug carrier who exhibits a profile, nor is it material whether the circumstances leading to the discovery of the cocaine were of the defendant's making, all that matters is that the search be legally conducted.

VI. Peace Officers May Conduct Searches or Make Arrests

The fact that a search is conducted or that an arrest is made by a peace officer rather than by a court employee would render the unconstitutional or pretextual. In (Burger v. United States, 107 S. Ct. 2651 36) the United States Supreme Court commented; that they failed to see any constitutional significance in the fact that peace officers, rather than "administrative" agents, are permitted to conduct the inspection. The significant respondent lies in the role of police officers power to arrest for offenses other than violations of the administrative scheme.

It is, however, important to note that some state police officers, like those in New York, have numerous duties in addition to those associated with traditional police work. As a result, many states do not have the resources to assign the enforcement of a particular administrative regulatory to a specialized agency. (El Paso County Sheriff's Department is responsible for providing a security plan and manning the county courthouse with security personnel.)

So long as any regulatory scheme is properly administrative it is not rendered illegal by the fact that the inspecting officer has the power to arrest individuals for violations other than those created by the scheme itself.

VI. Conclusion

Courthouse Security is a vital interest to our judicial system. It will change the way all courthouses operate daily. Recently, the National Sheriffs Association conducted a survey of the sheriffs who attended the annual conference in Pittsburgh, Pennsylvania, to determine which topics would be selected as themes for the 1995 Editorial Calendar.

The following is a list of the topics that were mentioned as choices and their corresponding rank.²⁷

1. Obtaining Funding/Where's the Money
2. Courthouse Security
3. Professionalism/Recruitment/Selection of New Officers
4. Dealing with Law Enforcement Stress
5. Ethics
6. Youth Programs
7. Media Relations and Public Speaking

Noted that courthouse security, ranked second on the list. It is a growing concern for most sheriff's departments and county officials, who may be hard-pressed to provide courthouse security. The lack of personnel resources and funding may create a liability to people and county government. If a fatality should occurred in the courthouse, the cost to settle a legal battle might bankrupt the county government. The number of felony trials is also increasing and the chances of having a serious incident increases dramatically because of the type of violence that is occurring in our society. It may be better to pay now then to pay later at the cost of a life or thousands of dollars.

ENDNOTES

1. United States Marshals Service, Courthouse Assessment and Survey, Robert Lozano, February 11, 1993.

2. Annotation, Denial of entry to a Federal Courthouse unless packages submitted for examinations, 454 F.2d 1230 (6th Cir.1972).

3. Annotation, Inspection of briefcases and parcels as a condition to enter a courthouse, 567 F.2d 897 (9th Cir. 1978).

4. Annotation, Parcels, objects or briefcases brought into courthouse inspected for weapons, 463 A 2d 1370 (R.I. 1983).

5. Annotation, Packages, briefcases or other items carried by a person must be offered for an inspection to enter a courthouse, 421 N.E.2d 447 (Mass.1981).

6. Annotation, Briefcases, packages, etc. inspected, 331 F.Supp.266 (M.D. Tenn.1971).

7. Annotation, Briefcases or other items carrier by a person for an inspection to enter an airport terminal, 614, F. 2d 1223 (1980).

8. ABC News Night Line, Evolution of Courthouse security, United States Marshals Service Training Academy, Video VHS.

9. Ibid.

10. ABC News Night Line, Judicial Security, United States Marshals Service, Training Academy, Video VHS.

11. Ibid.

12. El Paso County Commissioners Court, Approval of Courthouse Security, Motion #19 (Item #22) February 9, 1994.

13. Fourth Amendment, United States Constitution, Grolier Electronic Publishing, Inc.1992.

14. Ibid.

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15. Ibid.

16. Ibid.

17. Ibid.

18. Ibid.

19. Annotation, Search procedure as a condition for entering a state courthouse, 646 F.Supp 30,32 (N.D.tll 1986).

20. Annotation, Persons seeking to enter a courthouse must be afforded the option of choosing not to enter the premises rather than submitting to be search, 48332 F, 2d 893,911(9th Cir 1973).

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22. Annotation, Examination of briefcases by means of x-ray machine is a search, 637 F,2d (9th Cir, 1980).

23. Annotation, Persons seeking not to be search at airport terminals may avoid the search by electing not to fly, 482 F.2d 893,913(9th Cir.1973).

24. Annotation, The opportunity to avoid any follow-up search by not entering the courthouse, 800 F.2d 902.

25. Annotation, Search of Closed Containers, 102 S.Ct. 2157,2171(1982).

26. Annotation, Discovery of illicit drugs during a courthouse search, 482 F.2d.2771.

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- United States v. Henry, 614 F. 2d 1223 (1980)
- United States v. Pulido-Baquerizo, 800 F. 2d 902
- United States v. Ross, 102 S. Ct. 2157, 2171 (1982)
- United States v. Skipwith, 482 F. 2d 1277