

## Indiana Supreme Court Overturns 900 Years of English Common Law and Deals a Blow to Personal Privacy

May 17, 2011 - Just about everyone has heard the term, "A man's home is his castle." It may sound quaint today, even a little politically incorrect in this day and age, but it has its roots in English common law. The concept dates back to the year 1215 and the Magna Carta. It became a part of English law because of abuses by the crown, forcing entry into people's homes by soldiers and police authorities and subjecting them to searches and confiscation of property without any right to resist. This same concept came into play in the Declaration of Independence which specifically mentioned the quartering of troops in private homes as one of the numerous violations of law by the king and reasons for breaking away from England. On May 12, 2011, the Indiana Supreme Court decided that 900 years of English common law was all wrong and dealt a serious blow to the Fourth Amendment.

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The question before the Indiana Supreme Court centered around the rights of homeowners when the police illegally enter their residence. Specifically, do you have the right to resist such entry? For the past nine centuries the answer to that question has been "yes".

The case before the court arose out of an argument between a married couple which was taking place outside of their apartment. When the police arrived, the couple retreated into their apartment and informed the police that they weren't needed. The officers didn't listen and one of the officers tried to enter the apartment but was blocked by the husband; Richard L. Barnes. When the officer persisted, the husband forced him up against a wall only to be shot with a stun-gun by another officer.

Neither of the officers involved in the incident had a warrant and there was apparently no reason to believe that the argument had turned violent. That means they had no probable cause to enter the Barnes' residence. But a sharply divided Indiana Supreme Court saw it differently.

Acknowledging that they were overturning long established common law, Justice Steven David wrote, "This Court is faced for the first time with the question of whether Indiana should recognize the common-law right to reasonably resist unlawful entry by police officers. We conclude that public policy disfavors any such right."

The court concluded that the proper form to protest an illegal police entry was in court. That means that if a police officer enters your home, confiscates your possessions, or does any harm to you and your loved ones, you must stand idly by. Your only remedy is to go to court to sue them. If they want to use anything they took from your home against you in a trial, your only remedy is to hope that the court will throw out that evidence.

The ramifications of the decision are frightening. Under the ruling, simply shouting at a police officer to stop a search of your home could result in your arrest for interfering with the police.

The vote by the court was 3 to 2. In a blistering rebuttal to the decision, Justice Robert D. Rucker wrote, "â€ the common law rule supporting a citizen's right to resist unlawful entry into her home rests on a very different ground, namely, the Fourth Amendment to the United States Constitution. Indeed, "the physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed." Payton v. New York, 445 U.S. 573, 585 (1980). In my view it is breathtaking that the majority deems it appropriate or even necessary to erode this constitutional protection based on a rationale addressing much different policy considerations. There is simply no reason to abrogate the common law right of a citizen to resist the unlawful police entry into his or her home."

Fortunately, the ruling may eventually wind up at the US Supreme Court which has ruled on more than one occasion that individuals do have the right to resist unlawful entry or arrest. But that may be a long time in coming. In the mean time, the Indiana ruling is likely to have serious privacy and Fourth Amendment ramifications for residents of that state.

byJim Malmberg

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