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Happy 4th of July

# Legal Bytes

## Life, Liberty, and the Pursuit of Happiness

In the year 1843, a bright young scholar named Mellen Chamberlain was collecting evidence on the American Revolution. He interviewed Captain Levi Preston, 91 yrs. old, a cantankerous Yankee, who had fought on the day of Lexington and Concord. "Captain Preston, what made you go to the Concord Fight?" the historian began. "What did I go for?" he replied.

"Were you oppressed by the Stamp Act?"

"I never saw any stamps," Captain Preston answered, "and I always understood that none were ever sold."

"Well, what about the tea tax?"

"Tea tax? I never drank a drop of the stuff. The boys threw it all overboard."

But I suppose you had been reading Harrington, Sidney, and Locke about the eternal principle of liberty?"

"I never heard of these men," Captain Preston said. "The only books we had were the Bible, the Catechism, Watts' Psalms, and hymns and the almanacs."

"Well, then, what was the matter?"

"Young man," Captain Preston replied, "what we meant in going for those Redcoats was this: we always had been free, and we meant to be free always. They didn't mean we should."\*

Every Fourth of July we celebrate American independence — but why, and what does it mean? The political consequence of the American Revolution was the liberation of the thirteen colonies from British rule. The Continental Congress declared "that these United Colonies are, and of Right ought to be, Free and Independent States; that they are absolved from all Allegiance to the British Crown, and that all political Connection between them and the State of Great-Britain, is and ought to be totally dissolved."



The Americans rebelled for freedom from their motherland because they had believed that their liberties had been seriously undermined by the British government.

The British government had acted despotically and tyrannically, expanding its power further into the lives of the colonists. During and after the French and Indian War (1754-1763), the British government became much more interested in the financial dealings of the American people, raised taxes, and compelled the colonists to house and support the troops in their communities. The Colonists were primarily protesting taxes and impositions that were being carried out in the name of empire, war finance, national security and mercantilism.

"Life, Liberty, and the pursuit of Happiness" is a well-known phrase in the United States Declaration of Independence. The phrase gives examples of the various "unalienable rights" which the Declaration says all human beings have been given by their Creator and for the protection of which they institute governments. We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights that among these are Life, Liberty and the pursuit of Happiness.

When I think of independence, I think about our own ideas, to be accountable for ourselves and our actions—to be able to stand on our own two feet. And sometimes to be independent enough to ask for and accept help when we need it.

And when it comes to freedom, I think of it as our greatest blessing in a democracy like our own. Yet I also see it as a concept delimited by the needs of others in addition to our own.

The ideas of liberty can be the most powerful thing on earth. To do your part, declare your own independence from the dominant statist zeitgeist, (the spirit of the times) and spread the message of freedom to people you care about today.

## Happy Fourth of July.

\*Liberty and Freedom, by David Hackett Fischer, Oxford University Press, Oxford, New York, 2005

## “Big Brother” Is Really Watching!

Recent news reports document the fact that our National Security Agency (the “NSA”) is searching and collecting information on Americans from a number of different internet organizations. This news confirms the warnings of what George Orwell predicted would happen in the future, as set forth in his novel 1984, and leads to the inescapable conclusion that we, as Americans, need to discuss and debate a number of issues related to what “Big Brother” ought to be entitled to collect on us, and how the use of this information should be limited.

At the top of the list is the statement made recently by President Obama that Americans may need to give up some freedom in return for security from terrorism. But shouldn't we debate whether any elected official has the right to decide what degree of freedom Americans can have?

Rather, isn't it true that the freedom Americans have is set forth and based in our Constitution. The NSA's “snooping” has brought to the forefront a looming confrontation between available sources of information, and the legal framework of the government's right to investigate individuals. We still argue about whether email is a protected personal communication, or not. Can one give up one's Fourth Amendment protections merely by signing onto Twitter or Facebook? These issues need to be addressed.

The Fourth Amendment of the Constitution has very precise language regarding the search and seizure of personal information. The Fourth Amendment states: “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 places to be searched, and the persons or things to be seized.”



In the past, our primary source of communication of personal information were the telephone and the postal service. In 1986 Congress passed the Electronic Communications and Privacy Act (ECPA). This Act states that electronic surveillance or wiretapping must have the foreknowledge and approval of federal judges and be very specific. This calls into question whether the NSA's “mining” of nine internet sources is a violation of the ECPA.

The internet is now widely utilized to pay bills, conduct financial transactions, and communicate via email. The internet has, for many people, essentially replaced the postal service as a way to conduct business transactions and commu-

nicate. Email's legal status has yet to be properly defined by law. Communication by email is often considered a “letter”. Under Title 39 of the U.S. Code, it is a crime to seize another person's mail. Are emails de-facto letters, and therefore protected under Title 39?

The issue of Privacy, derived from the Fourth Amendment also comes into question. Privacy rights may be forfeited, but only under very specific, well defined, conditions. Courts have ruled in the past that the forfeiture of

privacy rights must be limited and very specific. Therefore is information on the internet considered private, and therefore protected by the Constitution? NSA's collection of information from the internet has brought this issue to the forefront as something that will likely need to be clearly addressed by the U.S. Supreme Court at some point in the near future.

At the state level, police and other governmental agencies are also using the power of the internet, and other means of electronic surveillance, so the same issues are being debated locally. For example, the Wisconsin Supreme Court has recently announced that it will decide whether police can track a suspect's whereabouts through court-ordered cell phone location data.

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## Wisconsin Supreme Court Will Hear Cell Phone Tracking Case

The Wisconsin Supreme Court has agreed to decide whether police can track a suspect's whereabouts through court-ordered cell phone location data.

Milwaukee police obtained video surveillance of a man purchasing a cell phone just before firing fatal gunshots in June 2009. Police then obtained the number of the phone purchased by the suspect and, with a court order, retrieved data and information from the cell phone service provider to track the phone's physical location.

Using that information, police tracked suspect Bobby Tate to his mother's apartment. Tate's mother consented to a search of the apartment, where they found Tate sleeping.

His clothes matched the description of clothes worn by the suspect in the video footage, and his blood-stained shoes contained the DNA of shooting victims at the scene.

Police arrested Tate, who then filed a motion to suppress evidence obtained as a result of the court-ordered tracking of his cell phone, raising a Fourth Amendment issue. The Fourth Amendment to the U.S. Constitution protects individuals from unreasonable searches and seizures.

The circuit court denied the motion, and a state appeals court affirmed in **State v. Tate**. But Tate continues to argue that obtaining location data to find his location is protectable "search," and there is no statutory authority to support the order issued by the judge. Without the search, there would have been no arrest.

The state argues that under recent GPS tracking precedent, no statutory authority is needed for a judge to order that a cell phone provider must provide location data. Our Wisconsin Supreme Court will soon make the final decision.

Interestingly, Montana has recently become the first state to enact legislation requiring that police obtain a warrant before tracking an individual based on cell phone information.

Wisbar News



## Insurance Claims Dept. "Just the TRUTH. Please!!"



In the INSURANCE CLAIMS DEPARTMENT, laughter is heard throughout the day to the excuses given by those submitting accident claims. Here's a few...enjoy!

1. "An invisible car came out of nowhere and struck my car and vanished."
2. "A truck backed through my windshield into my wife's face."
3. "I collided with a stationary truck coming the other way."
4. "The car in front of me hit the pedestrian, but he got up, so I hit him again."
5. "I pulled away from the side of the road, glanced at my mother-in-law and headed over the embankment."
6. "In an attempt to kill a fly, I drove into a telephone pole."
7. "A pedestrian hit me and went under the car."
8. (this is my favorite!) "I didn't think THE SPEED LIMIT APPLIED AFTER MIDNIGHT."