AMERICAN CONSTITUTIONALISM
VOLUME II: RIGHTS AND LIBERTIES
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Supplementary Material

Chapter 2: The Colonial Era—Criminal Justice/Search and Seizure

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Wilkes v. Wood, 19 Howell's State Trial 1153 (C.P. 1763)

John Wilkes (1725–1797) was a prominent journalist and leading member of Parliament. In 1763, Wilkes published an essay that was very critical of King George III. The King's ministers were determined to punish Wilkes. They issued a general warrant entitling John Wood and his associates to search Wilkes' house in London for incriminating evidence. After the house was ransacked, Wilkes sued Wood for trespass. Wood claimed he could not be sued because he had a search warrant. Under common law, a person with a valid warrant was immune to trespass suits. Wilkes claimed the warrant was invalid. The king and his ministers, he claimed, had no right to issue a general warrant. Wilkes asserted that English law required that warrants describe the items to be discovered and where those items were expected to be found.

Wilkes v. Wood *established the principle that general warrants are normally illegal. Government cannot simply give the police the authority to search a person's possessions in hopes of finding incriminating evidence. The warrant must specify what government authorities believe they will find and where. The remedy Wilkes obtained was substantial monetary damages. The exclusionary rule did not exist in 1763. Had Wood found smuggled goods in the Wilkes estate, those goods could have been introduced at a criminal trial. As you read the account of the case below, think about the advantages and disadvantages of damage suits as a means for protecting privacy rights? If you were an eighteenth-century police officer in London, how would this decision influence your behavior?*

His Lordship then went upon the warrant, which he declared was a point of the greatest consequence he had ever met with in his whole practice. The defendants claimed a right, under precedents, to force persons' houses, break open escrutores, seize their papers, &c. upon a general warrant, where no inventory is made of the things thus taken away, and where no offenders' names are specified in the warrant, and therefore a discretionary power given to messengers to search wherever their suspicions may chance to fall. If such a power is truly invested in a Secretary of State, and he can delegate this power, it certainly may affect the person and property of every man in this kingdom, and is totally subversive of the liberty of the subject.

And as for the precedents, will that be esteemed law in a Secretary of State which is not law in any other magistrate of this kingdom? If they should be found to be legal, they are certainly of the most dangerous consequences; if not legal, must aggravate damages. . . . I still continue of the same mind, that a jury have it in their power to give damages for more than the injury received. Damages are designed not only as a satisfaction to the injured person, but likewise as a punishment to the guilty, to deter from any such proceeding for the future, and as a proof of the detestation of the jury to the action itself.

. . . .It is my opinion the official precedents, which had been produced since the [English] Revolution, are no justification of a practice in itself illegal, and contrary to the fundamental principles of the constitution; though its having been the constant practice of the office, might fairly be pleaded in mitigation of damages.

. . . .

The jury, after withdrawing for near half an hour, returned, and found a general verdict upon both issues for the plaintiff, with a thousand pounds damages.