

THE CONTINUITY PRINCIPLE, ADMINISTRATIVE
CONSTRAINT, AND THE FOURTH AMENDMENT

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ABSTRACT

This Article uses three Supreme Court decisions from the past term, *Illinois v. Caballes*,¹ *Muehler v. Mena*,² and *Devenpeck v. Alford*,³ to explore the role of administrative restraint in Fourth Amendment analysis. The Warrant Clause embraces a principle of continuity, mandating that law enforcement authorities in conducting searches and seizures adhere to the goals previously articulated in the warrant. I argue that the principle should apply as well when warrants are not practicable as the Court seemed to suggest in *Terry v. Ohio*.⁴ Once the objectives of the underlying warrantless search or seizure are satisfied, no further interference with liberty should be permitted. For instance, a pat down search to find weapons under *Terry* must stop once no weapons are found, and a legitimate effort to arrest a suspect in his or her home should not provide justification for a full scale search of the premises. The continuity principle reflects the long-held fear that governmental officials may be tempted to expand searches and seizures once they are given a green light to start. In *Caballes* and *Muehler*, therefore, questioning of the suspects should have stopped after the underlying purpose of the detention ended. The Article then suggests more generally that Fourth Amendment balancing should include systematic consideration of whether sufficient constraints are imposed on law enforcement officials. From that vantage point, courts have both over and under protected privacy under the Fourth Amendment, overemphasizing the threat to privacy in cases such as *Indianapolis v. Edmond*,⁵ in which there was little risk of administrative abuse but slighting the threat in *Caballes* and others.

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1 125 S. Ct. 834 (2005).

2 125 S. Ct. 465 (2005).

3 125 S. Ct. 588 (2004).

4 392 U.S. 1 (1968).

5 531 U.S. 32 (2000).