Written by **Robert Confer** on July 20, 2009

The Fourth Amendment's Shocking Development

In a ruling issued in June, Niagara County (New York) Judge Sara Sheldon Sperrazza concluded that the Niagara Falls Police Department was justified in its use of a Taser to extract DNA from a suspect and that doing so was not unconstitutional. It is believed to be the first ruling of its kind in the United States, one that could set an ugly precedent for the continued pillaging of the Fourth Amendment, which has seen some very dark days since September 11, 2001.

The criteria Sperrazza used to hone her decision were eerily similar to those exerted by the Bush and Obama administrations when detaining or eavesdropping on terror suspects. She painted the young man as a threat to society and worthy of tweaking of the Constitution in an effort to prevent a continuation of his alleged criminal efforts. The individual in question, 21-year-old Ryan Smith, was accused of invading his ex-girlfriend's home where he shot a man in the groin, tied up the woman's children, and then forced her to take him to home of the man who Smith had just shot.

Granted, Smith might not be a model citizen (he is also accused of robbing a gas station at gunpoint in 2006), but he is worthy of two key rights that we all share; one, that we are innocent until proven guilty and, two, that the people have, per the Fourth Amendment, "the right … to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures."

There is little that is more unreasonable than using a Taser to obtain evidence by immobilizing the suspect, especially one who was rightfully unwilling to give up his DNA because the Court had not consulted with the defense beforehand as is customary practice. It should also be noted that Smith had given a sample just a month prior, one that the police department had mishandled and allowed to spoil. Since Smith was so indignant, the police consulted with the prosecutor who, according to police reports, suggested they use "any means necessary." The Taser — rather than patience and due diligence — ended up being that means.

Smith, who was at the time sitting on the floor and in handcuffs according to *The Buffalo News*, was shocked — some would say tortured — by 50,000 volts for 4 seconds, a violent means by which to carry out a simple court order. Some would argue that the officers used force that had the potential to be deadly (certain agencies within the Canadian government are seriously reconsidering their use of stun guns because more than 20 people have died from police Tasing in the past six years alone in Canada, a

nation one-tenth as populous as ours and one with much less crime).

Despite such concern, the definition of "unreasonable searches" remains in the eye of the beholder. With activist judges who support the other operations of government rather than serving as their check-and-balance, the definition can be manipulated to an end that satisfies the state. Judge Sperrazza, in an attempt to deflect her support for this style of governance, wrote that the court does not have the scientific knowledge necessary to interpret the facts about Tasers and she asked the question, "It (50,000 volts) sounds like a high number but what is its relevance to the force imposed and pain inflicted?" Such logic opens the floodgates for further stun gun use — and other violent tactics — to secure court orders because the methods and instruments used, in the court's opinion, remain either irrelevant or harmless.

That freewheeling tone is present throughout the court papers in which Sperrazza also says the Taser use was warranted as long as it wasn't done "maliciously, or to an excessive extent, or with resulting injury," because the situation represented a "perfect storm where the crimes being investigated were egregious." Once again, she set a legal precedent by implying that the Fourth Amendment can be ignored or adjusted depending on the severity of the alleged crime. Compounding this abuse of the amendment is the fact that "egregious" is a nebulous term. One could expand on that wording and wonder if all-noncompliant individuals (such as executives who won't release sensitive documents or a citizen who struggles to pay fees or fines) might be subject to shocking due to their "egregious" acts. Defense attorney Patrick M. Balkin raised the same worry in denouncing the ruling: "[Sperrazza's] decision says you can enforce a court order by force. If you extrapolate that, we no longer have to have child support hearings; you can just Taser the parent," Balkin said.

It is this same mindset which has allowed the Patriot Act to sully the Fourth and Fifth Amendments through containment, torture, eavesdropping and other nefarious means. Shocking is no better — and definitely deadlier — than the waterboarding tactics we hear so much about. It's more accessible, too, as most officers carry a stun gun, something they are now empowered to use without restraint, which, in the end, puts all citizens — good or bad — at risk.

As with the Patriot Act, it looks as if Sperraza's conclusions might go unchecked. Neither Ryan Smith nor his lawyer has expressed any interest in appealing the court's ruling. That means the constitutionality of the case won't be addressed, and it will be used as a template for future acts by which the government can forcibly steal not just our property, but parts of our person as well.

The Founding Fathers would find this to be a truly shocking development.

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