

We the People Program
High School Hearing Questions: Fourth Amendment

1. In the 1928 wiretapping case of *Olmstead v. United States*, Justice Louis Brandeis wrote a dissent arguing for a general right to privacy. He stated, “The makers of our Constitution...sought to protect Americans in their beliefs, their thoughts, their emotions, and their sensations. They conferred, as against the Government, the right to be left alone—the most comprehensive of rights and the right most valued by civilized men.” Do you agree or disagree with Justice Brandeis? Why or why not?

- Where in the Constitution and the Bill of Rights might the right to privacy be implied?
- Under what circumstances, if any, is it appropriate for government to limit individual liberty in order to
- promote national security?

2. “We need procedures that translate the values of the Fourth Amendment (with its warrant requirement) ... into a new technological context.”* Do you agree or disagree with this claim by a legal scholar? Why?

- What values are inherent in the Fourth Amendment and why are they important?
- Some scholars argue that government can use surveillance data collection and data-mining technologies for good purposes such as keeping America safe from terrorist attacks, preventing crime, and delivering social services. Do such uses outweigh possible negative uses? Why or why not?

* Jack M. Balkin. “The Constitution in the National Surveillance State” in *The Constitution In 2020*. Jack M. Balkin and Reva B. Seigel, eds. New York: Oxford University Press, 2009, 2007.

3. In his dissent in a search and seizure case, the late Justice William Brennan wrote: While the machinery of law enforcement and indeed the nature of crime itself have changed dramatically since the Fourth Amendment became part of the Nation’s fundamental law in 1791, what the Framers understood then remains true today—that the task of combating crime and convicting the guilty will in every era seem of such pressing concern that we may be lured by the temptations of expediency into forsaking our commitment to protecting individual liberty and privacy.* Do you agree or disagree with Justice Brennan’s opinion? Why? What historical and contemporary evidence can you offer in support of your position?

- How does the Fourth Amendment attempt to balance the government’s need to gather evidence with the citizen’s right not to suffer unnecessary government intrusion? How successful have we, as Americans, been in achieving that balance?
- Given the increased risks of terrorism, what modifications, if any, do you think are necessary in the rules regarding search and seizure?

* Justice William Brennan in dissent. *United States v. Leon*, 468 U.S. 897 (1984).

Middle School Hearing Questions:

1. What rights does the Fourth Amendment protect and why are those protections important?

- What historical experiences led to the adoption of the Fourth Amendment?
- Why has the Fourth Amendment proved to be one of the more troublesome provisions of the Bill of Rights?

2. What fundamental American values are embodied in the Fourth Amendment?

- Why have Fourth Amendment issues been a persistent concern from colonial times until today?
- How and why does modern technology raise new concerns about the Fourth Amendment?