

YOSEMITE LAW DAY 2019

THE 4TH AMENDMENT IN THE 21ST CENTURY DIGITAL AGE

ESSAY PROMPT

Free Society

In the United States and around the world, freedom of speech and the press are among the most important foundations for a free society. Free speech and free press are prominent topics in public discourse and litigation. It is impossible to imagine a free society without these individual liberties, yet historical and current debates surrounding them continually challenge us to consider their boundaries and resilience. Changes in technology have reshaped how free speech and free press work in the everyday world.

In a well-developed, multi-paragraph essay of no more than 600 words, address the following question:

PROMPT:

What is “unreasonable search and seizure” in the digital age?

Discuss all or some of the U.S. Supreme Court cases **listed below** and analyze their impact, if any, in your life or the life of all Americans.

1. Do Americans have a right to telephone privacy?

The Fourth Amendment protects “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” For more than 50 years, courts have applied the Fourth Amendment to new technology. In the landmark case of *Katz v United States*, 389 U.S. 347 (1967) (Harlan, J. concurring), the United States Supreme Court determined that the Fourth Amendment applies when someone has a “reasonable expectation of privacy.” The Court held that police violated the Fourth Amendment by attaching a listening device to a public telephone booth to secretly record telephone conversations.

2. Can Americans legally be tracked by GPS devices on vehicles?

In 2012, in *United States v Jones*, 565 U.S. 400 (2012), the Supreme Court held that installing a Global Positioning System (GPS) tracking device on a vehicle to monitor its movements constituted a search subject to the limitations of the Fourth Amendment. The opinion did not rely upon the principle of an “expectation of privacy,” stated in *Katz*, but instead held that the placement of the GPS device on the vehicle was a trespass, which constituted a search.

3. Do Americans have the right to cell phone privacy?

In 2014, the Supreme Court decided *Riley v California*, 134 S.Ct. 2473 (2014), and held that the Fourth Amendment bars police from reviewing the contents of a cell phone that is in the possession of an individual who has been arrested, unless they first obtain a search warrant. The Court explained that “[m]odern cell phones are not just a technological convenience. With all they contain and all they may reveal, they hold for many Americans ‘the privacies of life.’ The fact that technology now allows an individual to carry such information in his hand does not make the information any less worthy of the protection for which the Founders fought.”

4. Can Americans legally be tracked by their cell phones?

Last year, in *Carpenter v United States*, No. 16-402, 585 U.S.____ (2018), the Supreme Court held that the Fourth Amendment requires a search warrant for the government to track past locations of a cell phone using records from a wireless service provider. In considering GPS technology, which allows a service provider to find and record the location of a cell phone, the Court observed that the technology had “afforded law enforcement a powerful new tool to carry out its important responsibilities... this tool risks Government

encroachment of the sort the Framers, after consulting the lessons of history, drafted the Fourth Amendment to prevent.”

5. Can Americans be tracked by drones?

The Supreme Court has not considered whether the Fourth Amendment applies to drones equipped with cameras and other surveillance devices, which may be operated by or on behalf of the government. However, it has applied the Fourth Amendment to other technologies used for surveillance, including thermal imaging, *Kyllo v. United States*, 533 U.S. 27 (2001), and aerial observation and photography from an airplane or helicopter, *California v. Ciraolo*, 476 U.S. 207 (1986); *Florida v. Riley*, 488 U.S. 445 (1989); *Dow Chemical Co. v. United States*, 476 U.S. 227 (1986).

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ESSAY CONTEST

RULES

Submissions must be typed, double-spaced and between 300 and 600 words in length. *The student's name, 8th grade teacher and school shall be neatly printed on a separate sheet of paper stapled to the back of the essay, but not elsewhere. (Students are invited to put a made up five digit code on each page for identification in case pages separate.)* All essays must be delivered to the participant's 8th grade teacher.

Plagiarism: If the reviewers find evidence that material has been substantially copied from another source and not credited by citing the author, title, and location of the source material, the committee may disqualify the essay from the contest. While researching is allowed and in fact encouraged, express your ideas in your own words, not those of others!

Judging Criteria: Essays will be judged for understanding of the subject, originality of thought, argumentation, organization, grammar, punctuation, and spelling. Participating 8th grade teachers shall score their students' essays in accordance with the above criteria and, no later than **April 15, 2019**, forward the top three choices to Carol Moses (carol@yosemitelawyer.com) Three qualified, independent judges chosen by The Law Day Committee will evaluate the entries from each class and pick three finalists for awards and prizes.

Awards: The top three essay writers will be announced, introduced, applauded and rewarded during the Law Day Yosemite 2019 celebration in Yosemite National Park on May 3, 2019. Prizes last year included an Apple iPad and an Apple iPod.

Questions: Questions regarding the essay contest should be directed to Carol Moses at (559) 449-9069 or carol@yosemitelawyer.com