

## Fourth Amendment meets changing technology, Act I

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## Interception of Communications

- How can the government get information about what you have said?



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## Amendment IV

- The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

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## Amendment V

- No person shall be ... compelled in any criminal case to be a witness against himself...

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## Olmstead v. United States (1928)

- The United States takes no such care of telegraph or telephone messages as of mailed sealed letters. The amendment does not forbid what was done here. There was no searching. There was no seizure. The evidence was secured by the use of the sense of hearing and that only. There was no entry of the houses or offices of the defendants.

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## Olmstead, Brandeis dissent

- "We must never forget that it is a Constitution we are expounding."
- "When the Fourth and Fifth Amendments were adopted, 'the form that evil had theretofore taken' had been necessarily simple. ... Subtler and more far-reaching means of invading privacy have become available to government."

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### Katz v. United States (1967)

- No less than an individual in a business office, in a friend's apartment, or in a taxicab, a person in a telephone booth may rely upon the protection of the Fourth Amendment. One who occupies it, shuts the door behind him, and pays the toll that permits him to place a call is surely entitled to assume that the words he utters into the mouthpiece will not be broadcast to the world. To read the Constitution more narrowly is to ignore the vital role that the public telephone has come to play in private communication.

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### Katz v. United States, Harlan concurrence

- [T]here is a twofold requirement, first that a person have exhibited an actual (subjective) expectation of privacy and, second, that the expectation be one that society is prepared to recognize as "reasonable." Thus a man's home is, for most purposes, a place where he expects privacy, but objects, activities, or statements that he exposes to the "plain view" of outsiders are not "protected" because no intention to keep them to himself has been exhibited. On the other hand, conversations in the open would not be protected against being overheard, for the expectation of privacy under the circumstances would be unreasonable.

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#### Wiretaps

- Olmstead (1928)
- Berger v. NY (1967)
- Katz (1967)

#### Informants

- On Lee (1952)
- Lopez (1963)
- Hoffa (1966)
- White (1971)

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### Informants

- "Misplaced trust" or "assumption of risk"
- Why is it reasonable that you assume the risk that any conversation partner may be wearing a wire, but not that any communications device may be tapped?

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