

# State of Michigan LAW DAY 2008 Essay Contest

"The Rule of Law: Foundation for Communities of Opportunity and Equity"

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## The Rule of Law: Electronic Surveillance

Suppose three men were suspected of conspiring against the government. When government officials heard about this, they were so eager to catch them that they installed wiretaps in the men's phone lines without obtaining search warrants. **Should U.S. officials have the right to conduct electronic surveillance without a search warrant?**

No, because it violates the Fourth Amendment right to be free from unreasonable search and seizure. This Amendment guarantees, "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."

The Amendment protects not just the objects and properties of people, but also their "effects" which includes their private conversations. In Katz v. United States, 389 U.S. 347, 351 (1967), the U.S. Supreme Court said "the Fourth Amendment protects people, not places" so it applies not only when the government breaks into someone's house, but also when it wiretaps. When a person telephones another person, they expect to have the conversation remain private.

Two core democratic values that support this opinion are the rights to liberty and the pursuit of happiness. Liberty means the government may not oppress us. Also, if people have to fear that the government is listening in on them, it would make them feel resentful. Some people say that having the government eavesdrop is good and makes them feel safe from terrorism and dangers. This is only partially true because if someone says the wrong thing, he might be arrested even if he is neither a terrorist nor dangerous. Another reason to require a warrant according to the Supreme Court is that "the fear of unauthorized official eavesdropping [must not] deter vigorous citizen dissent and discussion of Government action in private conversation." United States v. U.S. District Court, 407 U.S. 297,314(1972).

A judge must sign a warrant because the person who wants to do the surveillance will take his or her own side. A judge is neutral and does not take sides and will decide whether the request is reasonable and fair. This is an example of checks and balances. If the executive branch wants to conduct surveillance, the judicial branch has to determine whether the surveillance is based off of reasonable cause.

In the case of United States v U.S. District Court, the officials argued that for "domestic security" they needed to conduct surveillance without a warrant. The Court disagreed saying that wiretapping for "domestic security" was too vague. Otherwise, officials could always claim they were eavesdropping for domestic security and would be able to spy on people at will. The Court required specific proof that the surveillance really is necessary.

In conclusion, U.S officials should not have the right to use wiretaps without a search warrant. It violates the Fourth Amendment, without which our country would not be as free as it is today.