



INFORMATION PRIVACY LAW COURSE SERIES

Law Enforcement and National Security in the US

**A COMPARISON BETWEEN THE FOURTH AMENDMENT
AND FEDERAL ELECTRONIC SURVEILLANCE LAW**

	Fourth Amendment	Federal Electronic Surveillance Law
Applicability	<p>The Fourth Amendment applies to electronic surveillance when there is a reasonable expectation of privacy.</p> <p>The Fourth Amendment applies only to government officials (subject to limited exceptions).</p>	<p>Federal electronic surveillance law applies to all interceptions of communications and to accessing stored communications (even if there is no reasonable expectation of privacy).</p> <p>Federal electronic surveillance law applies to pen registers and trap and trace devices (Pen Register Act). The Fourth Amendment does not apply to these devices. <i>See Smith v. Maryland.</i></p> <p>Federal electronic surveillance law applies to government officials and to private parties.</p>
Judicial Authority to Obtain Access	<p>Subject to a number of exceptions, the Fourth Amendment requires a warrant supported by probable cause.</p>	<p>Federal electronic surveillance law contains a wide variety of forms of judicial authority, including subpoenas, court orders with varying levels of notice to the subject of the investigation, warrants, and the super warrant required by the Wiretap Act.</p>
Duration of Authority to Obtain Access	<p>Fourth Amendment warrants authorize a single entry and prompt search.</p> <p>Warrants must be narrowly circumscribed.</p>	<p>Federal wiretap orders have a rather broad duration. A judge can authorize 24-hour surveillance for a 30-day period.</p>
Enforcement	<p>The Fourth Amendment is enforced by the exclusionary rule.</p> <p>The Fourth Amendment can serve as the basis for a §1983 or <i>Bivens</i> action.</p>	<p>Federal electronic surveillance law is enforced through the exclusionary rule only sometimes – for interceptions of wire or oral communications under the Wiretap Act.</p> <p>Federal electronic surveillance law also has civil and criminal penalties.</p>

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