***Unit V, Question 3***

*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?*

**P1.** The Fourth Amendment was a response to the use of general warrants by British authorities in colonial days. A general warrant authorized British agents to look anywhere, often for unnamed people, when searching for illegalities, including seditious publications, contraband goods, vagrants, and many other activities that today would not be illegal.

**P2.** In many colonies, the authorities used writs of assistance to collect taxes and often simply to police the morals of the community. Attacks against general warrants and writs of assistance intensified after 1760, culminating in the ratification of the Bill of Rights in 1791.

**P3.** The Fourth Amendment centers on a significant constitutional value: protection against unreasonable searches and seizures. The general rule is that government officers may not search any persons or private property without a warrant based on probable cause. This rule reflects the high value that Americans have placed on the proposition that, as William Pitt state, “a man’s home is his castle.”

**P4.** The Amendment protects everyone, not just the criminally accused. Its most important function is to protect the privacy of persons who have not been charged with criminal conduct. The search warrant requirement means that before officials can conduct a search, they must convince a judge that the search, the intrusion into the person’s privacy, is warranted. One problem with the Amendment is its inclusion of the words “Shall not be violated.” It does not say what will happen if those rights are violated, or if illegally obtained evidence should be excluded from considerations in criminal proceedings.

**P5.** At first, “searches” required some sort of “trespass” or penetration into a physical area. It was not until the case of *Katz v. U.S.* in 1967 that a collision between privacy and technology required another look at the trespass notion. *Katz* overturned the 1928 decision in *Olmstead v. United States* that wiretapping did not violate the Fourth Amendment if the taps were planted outside the home resulting in no physical invasion. The *Katz* holding was that whenever a person had a “reasonable expectation of privacy,” the Fourth Amendment applied.

**P6.** In 1978, in response to scandals about political spying on Americans, Congress passed the Foreign Intelligence Surveillance (FISA) and created a new “court” to oversee federal surveillance of foreign agents within the United States. On December 16, 2005, the *New York Times* reported that the Bush administration had been conducting surveillance against U.S. citizens without warrants and without knowledge of the FISA Court since 2002.

**P7.** In 2001 the high court ruled in *Kyllo v. U.S.* that the use of a thermal imaging device to monitor the radiation of heat from a person’s home was a “search” within the meaning of the Fourth Amendment, and thus required a warrant. Eleven years later, in 2012, the court ruled once again on an issue regarding the amendment. This time, they decided in *Jones v. U.S.* that the government’s attachment and use of a GPS tracking device on a person’s vehicle to monitor its movements, constitutes a search under the Fourth Amendment, and requires a warrant.

**P8.** More recently, modern technologies have been controversial in their constitutionality, specifically of the 4th Amendment. An example of this includes the constitutionality of aspects of the PATRIOT Act, a law passed during the Bush administration to increase the scope of the federal government’s power to monitor its citizens and watch for any suspected wrongdoings. More recently, some states are considering (and some have passed) legislation regulating the use of drones. This summer former NSA contractor, Edward Snowden, leaked secret NSA documents regarding its surveillance programs refocusing national debate on our right to privacy implied in the Fourth Amendment.

**P9.**  In conclusion, the examples we have cited are illustrations of the historic struggle between the rights of individuals and the security of the nation. Whether it was British officials seeking evidence of sedition or modern-day presidents attempting to prevent terrorist activities, finding a solution to the tension between the two competing views continues today.

**P10.**  Thank you for your time. We are now eager to answer your questions.