

## CONSTITUTION 101

Module 11: The Fourth Amendment: Privacy in a Digital Age, Policing in America, and Protections from Unreasonable Searches and Seizures  
11.5 Primary Source

### KATZ V. UNITED STATES (1967)

View the case on the National Constitution Center's website [here](#).

#### SUMMARY

*Katz v. United States* addresses whether the Fourth Amendment's prohibition on unreasonable searches and seizures applies to electronic eavesdropping and wiretapping of a public phone booth. Acting on a suspicion that Charles Katz was transmitting gambling information over the phone to clients in other states, federal agents attached an eavesdropping device to the outside of a public phone booth used by Katz. Based on recordings of his end of the conversation, Katz was convicted for illegal gambling. Katz argued that the government violated the Fourth Amendment by listening in on his conversation. As public phone booths and electronic communications became more common in American life, the Supreme Court had to determine whether and how to apply a constitutional text written in 1791 to the technological changes of modern life. Today, such questions persist as to when the government can obtain cell phone data from cell phone providers, and whether they can search a smartphone containing all the intimate details of one's life.

[Read the Full Opinion](#)

#### **Excerpt: Majority Opinion, Justice Stewart**

**In Fourth Amendment cases, we must focus on people, not places.**[T]he Fourth Amendment protects people, not places. What a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection. But what he seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected.

**Even though Katz was in a public phone booth, he sought to keep his conversation private.**The Government stresses the fact that the telephone booth from which the petitioner made his calls was constructed partly of glass, so that he was as visible after he entered it as he would have been if he had remained outside. But what he sought to exclude when he entered the booth was not the intruding eye—it was the uninvited ear. He did not shed his right to do so simply because he made his calls from a place where he might be seen. 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

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Constitution more narrowly is to ignore the vital role that the public telephone has come to play in private communication. . . .

**The government may violate the Fourth Amendment even if it doesn't conduct a physical search or seizure.** [O]nce it is recognized that the Fourth Amendment protects people—and not simply 'areas'—against unreasonable searches and seizures it becomes clear that the reach of that Amendment cannot turn upon the presence or absence of a physical intrusion into any given enclosure. . . .

**The government eavesdropping here represents a "search and seizure" under the Fourth Amendment.** The Government's activities in electronically listening to and recording the petitioner's words violated the privacy upon which he justifiably relied while using the telephone booth and thus constituted a 'search and seizure' within the meaning of the Fourth Amendment. The fact that the electronic device employed to achieve that end did not happen to penetrate the wall of the booth can have no constitutional significance. . . .

#### **Excerpt: Concurrence, Justice Harlan**

**Harlan lays out the two-part "reasonable expectation of privacy" test that the Court would adopt for Fourth Amendment cases.** As the Court's opinion states, 'the Fourth Amendment protects people, not places.' The question, however, is what protection it affords to those people. Generally, as here, the answer to that question requires reference to a 'place.' My understanding of the rule that has emerged from prior decisions is that there 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.

**Katz wins.** The critical fact in this case is that '(o)ne who occupies it, (a telephone booth) shuts the door behind him, and pays the toll that permits him to place a call is surely entitled to assume' that his conversation is not being intercepted. The point is not that the booth is 'accessible to the public' at other times, but that it is a temporarily private place whose momentary occupants' expectations of freedom from intrusion are recognized as reasonable. . . .

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### **Excerpt: Dissent, Justice Black**

**The Court is rewriting the Fourth Amendment's text; this is wrong.** I do not believe that it is the proper role of this Court to rewrite the [Fourth] Amendment in order 'to bring it into harmony with the times' and thus reach a result that many people believe to be desirable. . . .

**Black offers a textualist argument.** The Fourth Amendment says that '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.'

**The Fourth Amendment protects physical things like bodies, houses, and papers; the Fourth Amendment's text doesn't cover non-physical things like eavesdropping.** The first clause protects 'persons, houses, papers, and effects, against unreasonable searches and seizures . . . ' These words connote the idea of tangible things with size, form, and weight, things capable of being searched, seized, or both. The second clause of the Amendment still further establishes its Framers' purpose to limit its protection to tangible things by providing that no warrants shall issue but those 'particularly describing the place to be searched, and the persons or things to be seized.' A conversation overheard by eavesdropping, whether by plain snooping or wiretapping, is not tangible and, under the normally accepted meanings of the words, can neither be searched nor seized.

**Black continues the same line of argument.** In addition the language of the second clause indicates that the Amendment refers not only to something tangible so it can be seized but to something already in existence so it can be described. Yet the Court's interpretation would have the Amendment apply to overhearing future conversations which by their very nature are nonexistent until they take place. . . . I must conclude that the Fourth Amendment simply does not apply to eavesdropping. . . .

**The Court's broad conception of privacy is inconsistent with the Fourth Amendment's text; the Court's approach gives too much power to the courts.** [B]y arbitrarily substituting the Court's language, designed to protect privacy, for the Constitution's language, designed to protect against unreasonable searches and seizures, the Court has made the Fourth Amendment its vehicle for holding all laws violative of the Constitution which offend the Court's broadest concept of privacy. . . . No general right is created by the Amendment so as to give this Court the unlimited power to hold unconstitutional everything which affects privacy. Certainly the Framers, well acquainted as they were with the excesses of governmental power, did not intend to grant this Court such omnipotent lawmaking authority as that. The history of governments proves that it is dangerous to freedom to repose such powers in courts.

**\*Bold sentences give the big idea of the excerpt and are not a part of the primary source.**