

Supreme Court of the United States

Charles KATZ, Petitioner,

v.

UNITED STATES.

No. 35.

Argued Oct. 17, 1967.

Decided Dec. 18, 1967.

Defendant was convicted in the United States District Court for the Southern District of California, Central Division, Jesse W. Curtis, J., of a violation of statute proscribing interstate transmission by wire communication of bets or wagers, and he appealed. The Court of Appeals, [369 F.2d 130,](http://www.westlaw.com/Find/Default.wl?rs=dfa1.0&vr=2.0&DB=350&FindType=Y&SerialNum=1966123118) affirmed, and certiorari was granted. The Supreme Court, Mr. Justice Stewart, held that government's activities in electronically listening to and recording defendant's words spoken into telephone receiver in public telephone booth violated the privacy upon which defendant justifiably relied while using the telephone booth and thus constituted a ‘search and seizure’ within Fourth Amendment, and fact that electronic device employed to achieve that end did not happen to penetrate the wall of the booth could have no constitutional significance. The Court further held that the search and seizure, without prior judicial sanction and attendant safeguards, did not comply with constitutional standards, although, accepting account of government's actions as accurate, magistrate could constitutionally have authorized with appropriate safeguards the very limited search and seizure that government asserted in fact took place and although it was apparent that agents had acted with restraint.

Judgment reversed.

Mr. Justice Black dissented.

**\*\*509** **\*347** Harvey A. Schneider and Burton Marks, Beverly Hills, Cal., for petitioner.

**\*348** John S. Martin, Jr., Washington, D.C., for respondent.

MR. JUSTICE STEWART delivered the opinion of the Court.

[[1]](#Document1zzF11967129584)[[2]](#Document1zzF21967129584) The petitioner was convicted in the District Court for the Southern District of California under an eight-count indictment charging him with transmitting wagering information by telephone from Los Angeles to Miami and Boston in violation of a federal statute.[FN1](#Document1zzB00111967129584) At trial the Government was permitted, over the petitioner's objection, to introduce evidence of the petitioner's end of telephone coversations, overheard by FBI agents who had attached an electronic listening and recording device to the outside of the public telephone booth from which he had placed his calls. In affirming his conviction, the Court of Appeals rejected the contention that the recordings had been obtained in violation of the Fourth Amendment,**\*349** because ‘(t)here was no physical entrance into the area occupied by, (the petitioner).’ [FN2](#Document1zzB00221967129584) **\*\*510** We granted certiorari in order to consider the constitutional questions thus presented.[FN3](#Document1zzB00331967129584)

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The petitioner had phrased those questions as follows:

‘A. Whether a public telephone booth is a constitutionally protected area so that evidence obtained by attaching an electronic listening recording device to the top of such a booth is obtained in violation of the right to privacy of the user of the booth.

**\*350** ‘B. Whether physical penetration of a constitutionally protected area is necessary before a search and seizure can be said to be violative of the Fourth Amendment to the United States Constitution.’

[[3]](#Document1zzF31967129584)[[4]](#Document1zzF41967129584)[[5]](#Document1zzF51967129584)[[6]](#Document1zzF61967129584)[[7]](#Document1zzF71967129584)[[8]](#Document1zzF81967129584) We decline to adopt this formulation of the issues. In the first place the correct solution of Fourth Amendment problems is not necessarily promoted by incantation of the phrase ‘constitutionally protected area.’ Secondly, the Fourth Amendment cannot be translated into a general constitutional ‘right to privacy.’ That Amendment protects individual privacy against certain kinds of governmental intrusion, but its protections go further, and often have nothing to do with privacy at all.[FN4](#Document1zzB00441967129584) Other provisions of the Constitution protect personal privacy from other forms of governmental invasion.[FN5](#Document1zzB00551967129584) But the protection of a **\*\*511** person's general right to privacy-his right to be let alone by other people[FN6](#Document1zzB00661967129584)-is, like the **\*351** protection of his property and of his very life, left largely to the law of the individual States.[FN7](#Document1zzB00771967129584) …

Because of the misleading way the issues have been formulated, the parties have attached great significance to the characterization of the telephone booth from which the petitioner placed his calls. The petitioner has strenuously argued that the booth was a ‘constitutionally protected area.’ The Government has maintained with equal vigor that it was not.[FN8](#Document1zzB00881967129584) But this effort to decide whether or not a given ‘area,’ viewed in the abstract, is ‘constitutionally protected’ deflects attention from the problem presented by this case.[FN9](#Document1zzB00991967129584) For the 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. See [Lewis v. United States, 385 U.S. 206, 210, 87 S.Ct. 424, 427, 17 L.Ed.2d 312;](http://www.westlaw.com/Find/Default.wl?rs=dfa1.0&vr=2.0&DB=708&FindType=Y&ReferencePositionType=S&SerialNum=1966131621&ReferencePosition=427) [United States v. Lee, 274 U.S. 559, 563, 47 S.Ct. 746, 748, 71 L.Ed. 1202.](http://www.westlaw.com/Find/Default.wl?rs=dfa1.0&vr=2.0&DB=708&FindType=Y&ReferencePositionType=S&SerialNum=1927124434&ReferencePosition=748) But what he seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected.**\*352**    See   [Rios v. United States, 364 U.S. 253, 80 S.Ct. 1431, 4 L.Ed.2d 1688;](http://www.westlaw.com/Find/Default.wl?rs=dfa1.0&vr=2.0&DB=708&FindType=Y&SerialNum=1960122556) Ex parte [Jackson, 96 U.S. 727, 733, 24 L.Ed. 877](http://www.westlaw.com/Find/Default.wl?rs=dfa1.0&vr=2.0&DB=780&FindType=Y&ReferencePositionType=S&SerialNum=1877150359&ReferencePosition=733).

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[[13]](#Document1zzF131967129584) 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,[FN10](#Document1zzB010101967129584) in a friend's apartment, [FN11](#Document1zzB011111967129584) or in a taxicab,[FN12](#Document1zzB012121967129584) 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 **\*\*512** 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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[[15]](#Document1zzF151967129584) We conclude that the underpinnings of Olmstead and Goldman have been so eroded by our subsequent decisions that the ‘trespass' doctrine there enunciated can no longer be regarded as controlling. 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.

**\*354** The question remaining for decision, then, is whether the search and seizure conducted in this case complied with constitutional standards. In that regard, the Government's position is that its agents acted in an entirely defensible manner: They did not begin their electronic surveillance until investigation of the petitioner's activities had established a strong probability that he was using the telephone in question to transmit gambling information to persons in other States, in violation of federal law. Moreover, the surveillance was limited, both in scope and in duration, to the specific purpose of establishing the contents of the petitioner's unlawful telephonic communications. The agents confined their surveillance to the brief periods during which he used the telephone booth,[FN14](#Document1zzB014141967129584) and **\*\*513** they took great care to overhear only the conversations of the petitioner himself.[FN15](#Document1zzB015151967129584) ...

It is apparent that the agents in this case acted with restraint. Yet the inescapable fact is that this restraint was imposed by the agents themselves, not by a judicial officer. They were not required, before commencing the search, to present their estimate of probable cause for detached scrutiny by a neutral magistrate. They were not compelled, during the conduct of the search itself, to observe precise limits established in advance by a specific court order. Nor were they directed, after the search had been completed, to notify the authorizing magistrate in detail of all that had been seized. In the absence of such safeguards, this Court has never sustained a search upon the sole ground that officers reasonably expected to find evidence of a particular crime and voluntarily confined their activities to the least intrusive **\*357** means consistent with that end. …

Wherever a man may be, he is entitled to know that he will remain free from unreasonable searches and seizures. The government agents here ignored ‘the procedure of antecedent justification \* \* \* that is central to the Fourth Amendment,'[FN24](#Document1zzB024241967129584) a procedure that we hold to be a constitutional precondition of the kind of electronic surveillance involved in this case. Because the surveillance here failed to meet that condition, and because it led to the petitioner's conviction, the judgment must be reversed. …

Mr. Justice HARLAN, concurring.

I join the opinion of the Court, which I read to hold only (a) that an enclosed telephone booth is an area where, like a home, [Weeks v. United States, 232 U.S. 383, 34 S.Ct. 341, 58 L.Ed. 652,](http://www.westlaw.com/Find/Default.wl?rs=dfa1.0&vr=2.0&DB=708&FindType=Y&SerialNum=1914100496) and unlike a field, [Hester v. United States, 265 U.S. 57, 44 S.Ct. 445, 68 L.Ed. 898,](http://www.westlaw.com/Find/Default.wl?rs=dfa1.0&vr=2.0&DB=708&FindType=Y&SerialNum=1924122659) a person has a constitutionally protected reasonable expectation of privacy; (b) that electronic as well as physical intrusion into a place that is in this sense private may constitute a violation of the Fourth Amendment;**\*361** and (c) that the invasion of a constitutionally protected area by federal authorities is, as the Court has long held, presumptively unreasonable in the absence of a search warrant.

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.

Mr. Justice BLACK, dissenting.

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My basic objection is twofold: (1) I do not believe that the words of the Amendment will bear the meaning given them by today's decision, and (2) I do not believe that it is the proper role of this Court to rewrite the Amendment in order ‘to bring it into harmony with the times' and thus reach a result that many people believe to be desirable. …

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 first clause protects ‘persons, houses, papers, and effects, against unreasonable searches and seizures \* \* \*.’ **\*\*519** 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.’ …

Tapping telephone wires, of course, was an unknown possibility at the time the Fourth Amendment was adopted. But eavesdropping (and wiretapping is nothing more than eavesdropping by telephone) was … There can be no doubt that the Framers were aware of this practice, and if they had desired to outlaw or restrict the use of evidence obtained by eavesdropping, I believe that they would have used the appropriate language to do so in the Fourth Amendment. They certainly would not have left such a task to the ingenuity of language-stretching judges. …

Since I see no way in which the words of the Fourth Amendment can be construed to apply to eavesdropping, that closes the matter for me. In interpreting the Bill of Rights, I willingly go as far **\*\*523** as a liberal construction of the language takes me, but I simply cannot in good conscience give a meaning to words which they have never before been thought to have and which they certainly do not have in common ordinary usage. I will not distort the words of the Amendment in order to ‘keep the Constitution up to date’ or ‘to bring it into harmony with the times.’ It was never meant that this Court have such power, which in effect would make us a continuously functioning constitutional convention.