Limits on REOP: Open fields, aerial searches, thermal imaging, and trash

KATZ:

1. Rule: 4th AMD protects a person from search and seizure if, under the circumstances, he has a justifiable expectation of privacy, regardless of whether an actual physical trespass occurred.
2. Harlan standard: The touchstone of Fourth Amendment analysis is whether a person has a "constitutionally protected reasonable expectation of privacy." Katz v. United States (1967). Two-part inquiry:
    1. First, has the individual ***manifested a subjective expectation of privacy*** in the object of the challenged search?
    2. Second, is society willing to recognize that expectation as reasonable?

JONES:

1. Rule: The Government's physical occupation of private property for the purpose of obtaining information is considered a search within the meaning of the 4th AMD.

Standing Req:

1. Only a person who has a legit expectation of privacy in the place searched or the thing seized may challenge the search
    a. Personal privacy interest: they had a REOP in the area searched or the items seized
    b. Direct impact: the search or seizure affected their rights not someone else's
    c. Determined by case by case basis
    d. Reasonableness assessed via totality of circumstances
    e. Ex of people with standing:
        i. person owned or had right to possess place searched
        ii. Place searches was in fact person's home (whether or not owned by them)
        iii. Person was overnight guest of owner

Third party doctrine limits REOP:

1. Court has held there can be no REOP in items info voluntarily given to a third party or held out to the public
    a. Exs: bank records, phone numbers
2. Open fields rule: areas outside the curtilage are considered "held out to the public" and are not protected by the 4th am.

Open Fields: Distinction btw, police actions in open fields where the 4th amendment does not apply, and searches of a person's home and the areas immediately adjacent to it, where the 4th amendment does apply. The distinction between whether land is curtilage or an open field is thus crucial to determining whether the 4th am applies at all.	
Category:	**Answer:**
Case Name	Oliver v. US

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(Facts) Who sued whom, when, why, and for what?	1. Acting on reports that marjuana was being raised on the farm of Oliver, two narcotics agents Kentucky state police went to the farm to investigate 2. When they arrived at the farm, there was a locked gate with a no trespassing sign 3. Agents use a footpath that went around one side of the gate to enter into Oliver's property and found a field of marijuana over a mile from petitioner's home
What happened in lower courts?	1. District Ct suppressed evidence. They applied Katz and reasoned that Oliver had a reasonable expectation that the field would remain private (no trespassing sign, field was highly secluded, bounded on all sides) 2. Court of Appeals reversed, conclusion Katz had not impaired that open fields doctrine of Hester
(Issue) What is the question before the court?	Does a police search without a warrant or probable cause of a field where the owner has taken steps to establish his right to privacy violate the Fourth Amendment?
(Holding) What is the court's answer to the issue?	No this was not search bc open fields doctrine permits officers to enter and search a field without a warrant
(Rule) What rule does the court apply in answering that question?	Open fields doctrine: permits officers to enter and search a field without a warrant Case Rule: Under the open fields doctrine, an individual may not legitimately demand privacy for activities conducted out of doors in fields except in the area immediately surrounding the home (aka areas not within the immediate vicinity of one's home is not protected by the 4th Am)
(Reasoning) How does the court reason its way to its conclusion	1. Open fields doctrine in Hester was founded on the explicit language of the 4th Am. which includes "persons, houses, papers, and effects" a. Open fields are non of the above and not "effects" within the meaning of the 4th am effects not the same as property 2. The 4th Am does not merely protect the subjective expectation of privacy but only those "expectation[s] that society is prepared to accept as reasonable because open Fields do not provide the setting for those intimate activities that the amendment is intended to shelter from government interference or surveillance a. Also no societal interest in protecting activities that usually occur in open fields and these lands <u>are usually accessible to the public</u> b. For those reasons, the asserted expectation of privacy in open fields is not an expectation that "society recognizes as reasonable" 3. The premise that <u>property interest control the right of the government to search and seize has been discredited</u>. Thus, in the case of open

	fields, the general rights of property protected by the common law of trespass have little or no relevance to the applicability of the 4th am Not the same bc they have different legal basis: what the 4th am is concerned about is privacy not property interest, so that's why trespass is not the same as violation of reasonable expectation of privacy
(Dissent)	1. In determining whether an expectation of privacy asserted in a physical space is reasonable court should consider 3 factors (categories): a. Whether the expectation at issue is rooted in entitlements defined by positive law b. The nature of the uses to which spaces of the sort in question can be put c. Whether the person claiming a privacy interest manifested that interest to the public in a way that most people should understand and respect 2. Re point a: a knowing entry upon fenced or otherwise enclosed and unenclosed land with signs excluding the public constitutes criminal trespass, therefore issue is recognized by property law 3. Re point b: owned woods and fields that are not exposed to public view have a lot of private interests (gathering, peaceful walks, etc.) 4. Re point c: Whether a person took normal precautions to maintain his privacy in a given space affects whether his interest is one protected by the 4th am because the court does not insist that a person has a right to exclude, so taking such precautions would strengthen the claimants want or privacy 5. RULE: private land naked in a fashion sufficient to render entry thereon a criminal trespass under the law of the state in which the land lies is protected by the 4th am's prescription on unreasonable searches and seizures
Notes	**Court holds that privacy interest are not coterminous with property rights, but dissent disagrees

Open Fields: 4 factors to take into account re curtilage and whether it is protected by 4th amendment	
Category:	**Answer:**
Case Name	U.S. v. Dunn
(Facts) Who sued whom, when, why, and for what?	1. Respondent (Dunn - property owner) and Codefendant (Carpenter), were suspected of manufacturing phenylacetone and amphetamine with intent to distribute after agent from DEA discovered carpenter had purchased large quantities of chemicals and equipment used to manufacture the drugs 2. DEA agents obtained warrants authorizing installation of a beeper in an electric hotplate stirrer, a drum of acetic anhydride, and a container holding phenylacetic acid bought by Carpenter

	3. Agents lost signal a few days later but regained signal when Carpenter brought the materials to Dunn's property 4. Aerial photos showed suspicious activity 5. Respondents ranch comprised approx 198 acres and was completely encircled by a perimeter fence and also contained several interior fences 6. Two barns were located approx 50 yards from fence encircling residence. The front of the larger of the two barns was enclosed by a wooden fence. Locked gates barred entry into barn proper 7. Nov. 5, law enforcement officials made a warrantless entry onto respondent's ranch property where they peered into the barn and observed what the agent thought to be a lab 8. Nov. 6 federal magistrate issued warrant authorizing a search of respondents ranch, warrant was executed on Nov. 8th
(Issue) What is the question before the court?	Is the area near a barn, located approximately 50 yards from a fence surrounding a ranch house is, for 4th am. purposes, within the curtilage of the house?
(Holding) What is the court's answer to the issue?	No
(Rule) What rule does the court apply in answering that question?	Whether the area in question is so intimately tied to the home itself that is should be placed under the home's umbrella of 4th amendment protection (curtilage questions) should be resolved with particular reference to four factors: 1. Proximity of the area claimed to be the curtilage to the home 2. Whether the area is included within an enclosure surrounding the home 3. The nature of the uses to which the area is put 4. The steps taken by the resident to protect the area from observation of people passing by *Note: this is not a formula, merely factors that should be taken into consideration
(Reasoning) How does the court reason its way to its conclusion	Applying these factors to respondent's barn and to the area immediately surrounding it, we have little difficulty in concluding that this area lay outside the curtilage of the ranch house: 1. The record discloses that the barn was located 50 yards from the fence surrounding the house and 60 yards from the house itself. Standing in isolation, this substantial distance supports no inference that the barn should be treated as an adjunct of the house. 2. It is also significant that respondent's barn did not lie within the area surrounding the house that was enclosed by a fence. Viewing the physical layout of respondent's ranch in its entirety, it is plain that the fence surrounding the residence serves to demark a specific area of land immediately adjacent to the house that is readily identifiable as

	part and parcel of the house. Conversely, the barn — the front portion itself enclosed by a fence — and the area immediately surrounding it, stands out as a distinct portion of respondent's ranch, quite separate from the residence. 3. It is especially significant that the law enforcement officials possessed objective data indicating that the barn was not being used for intimate activities of the home. This kind of makes the standard re intimacy not the nature of the activity itself, but the proximity to the enclosure of the home 4. Respondent did little to protect the barn area from observation by those standing in the open fields. Nothing in the record suggests that the various interior fences on respondent's property had any function other than that of the typical ranch fence; the fences were designed and constructed to corral livestock, not to prevent persons from observing what lay inside the enclosed areas.
Dissent	1. Holding: The behavior of law enforcement in this case runs afoul of the Fourth Amendment. The barn is within the curtilage of Dunn's home, and Dunn had a reasonable expectation of privacy. 2. Factor 1: Case law demonstrates that a barn is an integral part of a farm home and therefore lies within the curtilage. 3. Factor 2: The distance between the house and the barn does not militate against the barn or barnyard's presence in the curtilage →The barn was connected to the house by a "well walked" and a "well driven" path and was clustered with the farmhouse and other outbuildings in a clearing surrounded by woods, the presence of intervening fences fades into irrelevance. 4. Factor 3: The fact that the barn was not used for purely domestic / intimate purposes do not preclude its inclusion in the curtilage. a. Neither the smell of the chemicals nor the sound of the motor running would remove the protection of the Fourth Amendment from an otherwise protected structure. A barn, like a home, may simultaneously be put to domestic and nondomestic uses, even the manufacture of drugs. 5. Factor 4: Dunn went to great lengths to protect his privacy. a. He locked his driveway, fenced in his barn, and covered its open end with a locked gate and fishnetting. The Fourth Amendment does not require the posting of a 24-hour guard to preserve an expectation of privacy. 6. For the police habitually to engage in such surveillance — without a warrant — is constitutionally intolerable.
Notes	1. General rule: open fields are not under protection of the 4th amendment 2. Rule explanation: apply these rules through 4 factors 3. Curtilage: buildings/structures directly connected to or in prox with a family dwelling and as such considered part of the home itself

	a. In determining whether property is open field or curtilage, ask: Is the area so inherently tied to the home itself as to place the are under the home's protective umbrella?

Aerial Searches: The Court has found that aerial searches are not within the meaning of the Fourth Amendment and thus need not comply with the Fourth Amendment's requirements. Aerial searches are allowed if they do not invade "reasonable expectation of privacy"	
Category:	**Answer:**
Case Name	CA v. Ciraolo
(Facts) Who sued whom, when, why, and for what?	1. On September 2, 1982, Santa Clara Police received an anonymous telephone tip that marijuana was growing in respondent's backyard. Police were unable to observe the contents of respondent's yard from ground level because of a 6-foot outer fence and a 10-foot inner fence completely enclosing the yard. 2. Later that day, Officer Shutz, who was assigned to investigate, secured a private plane and flew over respondent's house at an altitude of 1,000 feet, within navigable airspace; he was accompanied by Officer Rodriguez. Both officers were trained in marijuana identification. 3. From the overflight, the officers readily identified marijuana plants 8 feet to 10 feet in height growing in a 15- by 25-foot plot in respondent's yard; they photographed the area with a standard 35mm camera. 4. On September 8, 1982, Officer Shutz obtained a search warrant on the basis of an affidavit describing the anonymous tip and their observations; a photograph depicting respondent's house, the backyard, and neighboring homes was attached to the affidavit as an exhibit. 5. The warrant was executed the next day and 73 plants were seized; it is not disputed that these were marijuana.
(Issue) What is the question before the court?	Is the Fourth Amendment violated by aerial observation without a warrant from an altitude of 1,000 feet of a fenced-in backyard within the curtilage of a home?
(Holding) What is the court's answer to the issue?	No
(Rule) What rule does the court apply in answering that question?	Aerial searches of one's home and curtilage does not run contrary to the constitutionally protected reasonable expectation of privacy established by the 4th amendment

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(Reasoning) How does the court reason its way to its conclusion	LOOKS TO KATZ INQUIRIES: First inquiry of Katz: has the individual manifested a subjective expectation of privacy in the object of the challenged search? 1. Whether instead he manifested merely a hope that no one would observe his unlawful gardening pursuits or expected privacy from all observations of his back yard, is not entirely clear: a. a 10-foot fence might not shield these plants from the eyes of a citizen or a policeman perched on the top of a truck or a two-level bus and only protects from a casual accidental observation Second inquiry of Katz: whether the expectation to privacy is reasonable (whether the govs intrusion infringes upon the personal and societal values protected by the 4th am) 1. Respondent argues that because his yard was in the curtilage of his home, no governmental aerial observation is permissible under the Fourth Amendment without a warrant. a. That the area is within the curtilage does not itself bar all police observation. The Fourth Amendment protection of the home has never been extended to require law enforcement officers to shield their eyes when passing by a home on public thoroughfares. Nor does the mere fact that an individual has taken measures to restrict some views of his activities preclude an officer's observations from a public vantage point where he has a right to be and which renders the activities clearly visible. b. Stems from concept of public access rationale: just bc an individual has taken measures to restrict some views of his activities does not preclude an officers observations from a public vantage point where they have a right to be
(Dissent)	1. The Court begins its analysis of the Fourth Amendment issue posed here by deciding that respondent had an expectation of privacy in his backyard, but nevertheless concludes Shutz could use an airplane — a product of modern technology — to intrude visually into respondent's yard. 2. Reliance on the manner of surveillance is directly contrary to the standard of Katz, which identifies a constitutionally protected privacy right by focusing on the interests of the individual and of a free society (rather than the manner of surveillance – ie whether the trespass is physical) 3. One may assume that the Court believes that citizens bear the risk that air travelers will observe activities occurring within backyards that are open to the sun and air. This risk, the Court appears to hold, nullifies expectations of privacy in those yards even as to purposeful police surveillance from the air. a. This is wrong because those who have an aerial view usually see the view for a couple seconds and just a glimpse 4. Holding: Since respondent had a reasonable expectation of privacy in his yard, aerial surveillance undertaken by the police for the purpose of

	discovering evidence of crime constituted a "search" within the meaning of the Fourth Amendment.
Notes	1. ID legal framework first, → link the facts up to the reasoning 2. *Naked eye includes ordinary enhancements 3. Empirical way or normative way: a. Empirical Approach: Looks at the objective aspects of the search and seizure (quantification); What IS it? b. Normative Approach: SHOULD people have a right to expect privacy under the particular circumstances? What SHOULD it be?

Aerial Searches:	
Category:	**Answer:**
Case Name	Florida v. Riley (plurality)
(Facts) Who sued whom, when, why, and for what?	1. Respondent Riley lived in a mobile home located on five acres of rural property. A greenhouse was located 10 to 20 feet behind the mobile home. Two sides of the greenhouse were enclosed. The other two sides were not enclosed but the contents of the greenhouse were obscured from view from surrounding property by trees, shrubs, and the mobile home. 2. At the time relevant to this case, two of the panels, amounting to approximately 10% of the roof area, were missing. A wire fence surrounded the mobile home and the greenhouse, and the property was posted with a "DO NOT ENTER" sign. 3. Pasco County Sheriff's office received an anonymous tip that marijuana was being grown on respondent's property. 4. The Investigating officer discovered that he could not see the contents of the greenhouse from the road, so he circled twice over respondent's property in a helicopter at the height of 400 feet. 5. He was able to see through the openings in the roof and one or more of the open sides of the greenhouse and to identify what he thought was marijuana growing in the structure. 6. A warrant was obtained based on these observations, and the ensuing search revealed marijuana growing in the greenhouse.
(Issue) What is the question before the court?	Does surveillance of the interior of a partially covered greenhouse in a residential backyard from the vantage point of a helicopter located 400 feet above the greenhouse constitute a 'search' for which a warrant is required under the Fourth Amendment and Article I, §12 of the Florida Constitution?
(Holding) What is the court's answer to the issue?	Yes

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(Rule) What rule does the court apply in answering that question?	Aerial observation of an area within the curtilage of a home at a reasonably expected height is not a search requiring a warrant under the terms of the Fourth Amendment.
(Reasoning) How does the court reason its way to its conclusion	1. (agrees with holding in Ciraolo) Under Ciraolo, Riley could not reasonably have expected the contents of his greenhouse to be immune from examination by an officer in an aircraft a. Riley could not reasonably have expected that his greenhouse was protected from public or official observation from a helicopter had it been flying within the navigable airspace for fixed-wing aircraft. 2. Sides and roof were left partially open so the precautions he took protected against ground-level observation. 3. It makes no difference that the helicopter was flying at 400 ft, any member of the public could have done so and observed his greenhouse a. This is not to say that an inspection of the curtilage of a house from an aircraft will always pass muster under the Fourth Amendment simply because the plane is within the navigable airspace specified by law. But it is of obvious importance that the helicopter in this case was not violating the law, and there is nothing in the record or before us to suggest that helicopters flying at 400 feet are sufficiently rare in this country to lend substance to respondent's claim that he reasonably anticipated that his greenhouse would not be subject to observation from that altitude. 4. The helicopter did not interfere with respondent's normal use of the greenhouse or of other parts of the curtilage. a. As far as this record reveals, no intimate details connected with the use of the home or curtilage were observed, and there was no undue noise, and no wind, dust, or threat of injury.
(Concurrence)	1. Holding: While the aerial observation in this case did not infringe on Riley's reasonable expectation of privacy, the plurality opinion places too much weight on the helicopter's compliance with air traffic laws. 2. The fact that a helicopter could conceivably observe the curtilage at virtually any altitude or angle, without violating FAA regulations, does not in itself mean that an individual has no reasonable expectation of privacy from such observation. a. Even individuals who have taken effective precautions to ensure against ground-level observations cannot block off all conceivable aerial views of their outdoor patios and yards without entirely giving up their enjoyment of those areas. To require individuals to completely cover and enclose their curtilage is to demand more than the "precautions customarily taken by those seeking privacy." b. If the public rarely, if ever, travels overhead at such altitudes, the observation cannot be said to be from a vantage point

	generally used by the public and Riley cannot be said to have "knowingly expose[d]" his greenhouse to public view. However, if the public can generally be expected to travel over residential backyards at an altitude of 400 feet, Riley cannot reasonably expect his curtilage to be free from such aerial observation. 3. Riley also did not refute the claim that the public commonly uses the airspace and thus failed to meet his burden to prove that his expectation of privacy in his greenhouse was reasonable. 4. Conclusion: Because there is reason to believe that there is considerable public use of airspace at altitudes of 400 feet and above, and because Riley introduced no evidence to the contrary before the Florida courts, I conclude that Riley's expectation that his curtilage was protected from naked-eye aerial observation from that altitude was not a reasonable one.
(Dissent)	Brennan: 1. Holding: the opinion relies almost exclusively on the fact that the police officer conducted his surveillance from a vantage point where, under FAA regulations, he had a legal right to be. The simple inquiry whether the police officer had the legal right to be in the position from which he made his observations does suffice bc it does not meet the reasonable expectation of privacy standard from Katz 2. The plurality undertakes no inquiry into whether low-level helicopter surveillance by the police of activities in an enclosed backyard is consistent with the "aims of a free and open society." Instead, it summarily concludes that Riley's expectation of privacy was unreasonable based solely on the fact that the police helicopter was within the airspace within which such craft are allowed by federal safety regulations to fly 3. Under the plurality's exceedingly grudging Fourth Amendment theory, the expectation of privacy is defeated if a single member of the public could conceivably position herself to see into the area in question without doing anything illegal. It is defeated whatever the difficulty a person would have in so positioning herself, and however infrequently anyone would in fact do so. In taking this view the plurality ignores the very essence of Katz. 4. This position also lacks meaningful limit to the plurality's holding. It is difficult to see what, if any, helicopter surveillance would run afoul of the plurality's rule that there exists no reasonable expectation of privacy as long as the helicopter is where it has a right to be. 5. Helicopters noise, wind, and dust violates the 4th amendments purpose to safeguard the privacy and security of individuals 6. Intimate details are arbitrary/unspecified 7. Suggested q: The question before us must be not whether the police were where they had a right to be, but whether public observation of Riley's curtilage was so commonplace that Riley's expectation of privacy in his backyard could not be considered reasonable. Blackmun: 1. Because I believe that private helicopters rarely fly over curtilages at an

	altitude of 400 feet, I would impose upon the prosecution the burden of proving contrary facts necessary to show that Riley lacked a reasonable expectation of privacy. 2. I would establish this burden of proof for any helicopter surveillance case in which the flight occurred below 1,000 feet — in other words, for any aerial surveillance case not governed by the Court's decision in California v. Ciraolo
	1. Quiet enjoyment of use (privacy question) 2. How the court analogizes and distinguishes property rights

Thermal Imaging of Homes: is a search and must comply with the 4th amendment.	
Category:	**Answer:**
Case Name	Kyllo v. US
(Facts) Who sued whom, when, why, and for what?	1. Officer suspected that marijuana was being grown in the home belonging to Kyllo (Indoor marijuana growth typically requires high-intensity lamps) 2. Agent Elliott and Dan Haas used a thermal imager to scan the triplex. 3. The scan of Kyllo's home took only a few minutes and was performed from the passenger seat of Agent Elliott's vehicle across the street from the front of the house and also from the street in back of the house. 4. The scan showed that the roof over the garage and a side wall of petitioner's home were relatively hot compared to the rest of the home and substantially warmer than neighboring homes in the triplex. Agent Elliott concluded that petitioner was using halide lights to grow marijuana in his house, which indeed he was. 5. The judge issued a search warrant based on tips from informants, utility bills, and the thermal imaging
What happened in lower courts?	1. Petitioner was indicted on one count of manufacturing marijuana, in violation of 21 U.S.C. §841(a)(1). 2. He unsuccessfully moved to suppress the evidence seized from his home and then entered a conditional guilty plea.
(Issue) What is the question before the court?	Does the use of a thermal-imaging device aimed at a private home from a public street to detect relative amounts of heat within the home constitute a "search" within the meaning of the Fourth Amendment?
(Holding) What is the court's answer to the issue?	Yes

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(Rule) What rule does the court apply in answering that question?	Obtaining any information regarding the interior of the home by sense-enhancing technology that could not otherwise have been obtained without physical "intrusion into a constitutionally protected area," constitutes a search — at least where the technology in question is not in general public use. GENERAL RULE: Where the Government uses a device that is not in general public use, to explore details of the home that would previously have been unknowable without physical intrusion, the surveillance is a "search" and is presumptively unreasonable without a warrant.
(Reasoning) How does the court reason its way to its conclusion	1. In assessing when a search is not a search in previous cases, the court runs contrary to Katz's interpretation of the 4th amendment's "reasonable expectation of privacy" bc it held that visual observation in a public area is not a search and does not need to be held to that standard 2. While the Katz standard may be vague as to what areas fall under its protection, in the case of the search of the interior of homes there is a ready criterion, with roots deep in the common law, of the minimal expectation of privacy that exists, and that is acknowledged to be reasonable. To withdraw protection of this minimum expectation would be to permit police technology to erode the privacy guaranteed by the Fourth Amendment. 3. Defense distinguishes between "off-the-wall" observations and "through-the-wall surveillance." a. The court rejected such mechanical interpretations of the Fourth Amendment in Katz, where the eavesdropping device picked up only sound waves that reached the exterior of the phone booth. Reversing that approach would leave the homeowner at the mercy of advancing technology — including imaging technology that could discern all human activity in the home. 4. Defense contends that the thermal imaging was constitutional because it did not "detect private activities occurring in private areas." a. The Fourth Amendment's protection of the home has never been tied to measurement of the quality or quantity of information obtained. In the home, our cases show, all details are intimate details, because the entire area is held safe from prying government eyes. Limiting the prohibition of thermal imaging to "intimate details" would not only be wrong in principle; it would be impractical in application. b. there is no necessary connection between the sophistication of the surveillance equipment and the "intimacy" of the details that it observes c. ** Bright line rule: We have said that the Fourth Amendment draws "a firm line at the entrance to the house." That line, we think, must be not only firm but also bright — which requires clear specification of those methods of surveillance that require a warrant.

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(Dissent)	1. Holding: Instead of concentrating on the rather mundane issue that is actually presented by the case before it, the Court has endeavored to craft an all-encompassing rule for the future. The use of a thermal-imaging device does not constitute a Fourth Amendment search, and therefore no warrant is needed. 2. There is a distinction of constitutional magnitude between "through-the-wall surveillance" that gives the observer or listener direct access to information in a private area, on the one hand, and the thought processes used to draw inferences from information in the public domain, on the other hand. 3. Bright line rule is inconsistent with 4th amendment: a. Principle should be: "'What a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection.'" b. this case involves nothing more than off-the-wall surveillance by law enforcement officers to gather information exposed to the general public from the outside of petitioner's home. No details were revealed → no physical penetration c. the ordinary use of the senses might enable a neighbor or passerby to notice the heat emanating from a building, particularly if it is vented, as was the case here. d. the contours of its new rule are uncertain because its protection apparently dissipates as soon as the relevant technology is "in general public use." 4. Since what was involved in this case was nothing more than drawing inferences from off-the-wall surveillance, rather than any "through-the-wall" surveillance, the officers' conduct did not amount to a search and was perfectly reasonable. a. Heat waves, like aromas that are generated in a kitchen, or in a laboratory or opium den, enter the public domain if and when they leave a building. A subjective expectation that they would remain private is not only implausible but also surely not "one that society is prepared to recognize as 'reasonable.'" b. Strong public interest: Just as "the police cannot reasonably be expected to avert their eyes from evidence of criminal activity that could have been observed by any member of the public," so too public officials should not have to avert their senses or their equipment from detecting emissions and drawing useful conclusions from such monitoring, is an entirely reasonable public service. c. Weak private interest: society will not suffer from a rule requiring the rare homeowner who engages in uncommon activities that produce extraordinary amounts of heat, and wishes to conceal that production from outsiders, to make sure that the surrounding area is well insulated
Notes	1. General rule touches on the advancement of the technology and says that the higher the advancement, the higher the intrusion and accessibility to the average public

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Searches of Trash: no reasonable expectation of privacy in what a person chooses to discard	
Category:	**Answer:**
Case Name	CA v. Greenwood
(Facts) Who sued whom, when, why, and for what?	1. After receiving tips, officer investigated – she asked garbage man to hand her trash bags from the person's house where she found evidence that she used as support to receive a warrant to search greenwood's home 2. Respondents posted bail and the same instance happened again
(Issue) What is the question before the court?	The issue here is whether the Fourth Amendment prohibits the warrantless search and seizure of garbage left for collection outside the curtilage of a home.
(Holding) What is the court's answer to the issue?	No
(Rule) What rule does the court apply in answering that question?	The warrantless search of trash left outside on the curb does not violate the Fourth Amendment, because a person has no reasonable expectation of privacy in trash left for collection in a publicly accessible place.
(Reasoning) How does the court reason its way to its conclusion	1. Respondents exposed their garbage to the public sufficiently to defeat their claim to Fourth Amendment protection. (The trash, which was placed on the street for collection at a fixed time, was contained in opaque plastic bags, which the garbage collector was expected to pick up, mingle with the trash of others, and deposit at the garbage dump. The trash was only temporarily on the street, and there was little likelihood that it would be inspected by anyone.) a. It is common knowledge that plastic garbage bags left on or at the side of a public street are readily accessible to animals, children, scavengers, snoops, and other members of the public. b. Moreover, respondents placed their refuse at the curb for the express purpose of conveying it to a third party, the trash collector, who might himself have sorted through respondents' trash or permitted others, such as the police, to do so. 2. Furthermore the police cannot reasonably be expected to avert their eyes from evidence of criminal activity that could have been observed by any member of the public.

(Dissent)	1. Complete strangers went through intimate details of Greenwood's private life and habits. The intrusions proceeded without a warrant, and no court before or since has concluded that the police acted on probable cause to believe Greenwood was engaged in any criminal activity. 2. "A container which can support a reasonable expectation of privacy may not be searched, even on probable cause, without a warrant." United States v. Jacobsen (1984). As the Court observes, if Greenwood had a reasonable expectation that the contents of the bags that he placed on the curb would remain private, the warrantless search of those bags violated the Fourth Amendment. a. Respondents deserve no less protection just because Greenwood used the bags to discard rather than to transport his personal effects. 3. The simple fact that it is possible that one's trash may be violated does not lead to the conclusion that privacy is not an expectation. a. Greenwood didn't expose the contents of his trash for all to see, all that was exposed were opaque sealed containers → therefore Faithful application of the warrant requirement did not require police to "avert their eyes from evidence of criminal activity that could have been observed by any member of the public." Rather, it only required them to adhere to norms of privacy that members of the public plainly acknowledge. b. County ordinance required him to place his trash for collection. Even if not the case, voluntary relinquishment of control over a package does not amount to a relinquishment of the expectation of privacy. If it did, every letter mailed through the postal service or package turned over for delivery by a private carrier would be divested of the protections of the Fourth Amendment.
Notes	General rule: garbage left in a public space (ie outside the curtilage) for collection may be searched without warrant

Analytical considerations:

1. Does the individual have standing
2. Does the gov action constitute a search
3. Does the third party doctrine apply
4. Was the government action reasonable
5. Any exceptions apply

Recap:

1. No protection in what is held out to the public
2. Open fields doctrine: distinguished btw open fields/public and curtilage; aerial searches;