Excerpt from Justice Harlan’s Concurring Opinion in *Katz v. the United States*, 1967

In the 1967 case *Katz v. the United States*, the Supreme Court ruled that wiretapping a public phone violates the privacy granted by the Fourth Amendment. In his concurring opinion agreeing with the court decision, Justice John M. Harlan outlined what determines a reasonable expectation of privacy.

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 . . . 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 . . . 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.

The question, however, is what protection it [the Fourth Amendment] 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.