



Katz v. United States

This moot court is based on the Supreme Court case of *Katz v. United States*. The case addresses two areas of constitutional tension. The first is how developments in technology should or should not change how we interpret the Bill of Rights. The second and related issue is how broadly we should find and protect privacy under competing conceptions of constitutional interpretation.

The lesson should begin with an overview of the federal and state court system and a brief explanation of appellate advocacy and the difference between a trial and an appellate argument. In order to make the event as interactive as possible, in the large group, give the students the summary of the facts followed by a brief discussion of the Supreme Court decision. Students should then be asked to take a stand “for or against” the majority decision. If one side lacks enough support, students should be encouraged to challenge themselves to defend the position they disagree with. Being able to understand and represent the other side’s arguments is the sign of a sharp legal mind.

Once students have taken sides, divide them into three groups, Petitioner (Katz), Respondent (US government) or Supreme Court Justices. The groups can then on their own prepare their arguments to the Supreme Court during the mini moot court. A group of 9 students should be selected to serve as the Justices of the Supreme Court.

In the small groups, have the students discuss the fact pattern and the applicable law.

Instructions for the students

Start is with the BRAINSTORMING SHEET & ARGUMENT SHEET. Review the case, then work through the SHEETS which will help the group prepare their arguments. During the discussion period you will need to select representatives (2-4) who will act as the advocates during the moot court. Students (Advocates) from each side will present a brief argument that reflects their group’s strongest points for an affirmative or negative response to the question posed. Afterwards the mock Supreme Court will decide the outcome of the case. Students will be

instructed that all students on each side can raise their hand to answer questions posed by the Justices of the Court if their advocates need assistance or do not have a satisfactory answer. Advocates will only have 15 minutes to present their arguments to the Supreme Court. Katz may reserve up to five (5) minutes for rebuttal which must be done at the start of their oral argument (kindly remind Katz to reserve time if he or she forgets as a rebuttal is a powerful tool during oral arguments). The rebuttal should focus on responding to issues that the government raised during their oral argument. You will also need to craft responses to any questions the Supreme Court might ask. The ARGUMENT SHEET is an excellent way to organize your group's thoughts.

BRAINSTORMING SHEET

Which side do you represent?

Your Group's Arguments (Rank from best to worst):

Opposition's Arguments (Rank from best to worst):

Counter-Arguments To Opposition's Arguments:

Possible Supreme Court Questions:

Responses To Supreme Court Questions:



FACT PATTERN HEART OF KATZ V. UNITED STATES

How do you think the Court should decide the matter?

We will argue and decide it today.

BACKGROUND:

Charles Katz made money by taking a percentage of the winnings on illegally placed bets. Knowing that transmitting bets by telephone was illegal, Katz placed his bets from public telephone booths (coin operated landlines placed in small enclosures that used to be readily available in the United States). In 1965, the Federal Bureau of Investigation, without a court issued warrant, began collecting evidence against him by recording his conversations through a small microphone placed on the outside of the booths.

At trial, Katz argued that the evidence should not be allowed because it violated his Fourth Amendment right to be free from “unreasonable searches and seizures”. The Court of Appeals upheld his conviction because there was no physical entrance by law enforcement into the phone booth and thus no Fourth Amendment violation.



ARGUMENT SHEET

Look over these arguments below. Note whether they help Katz (Appellant or Petitioner) or the United States government (Appellee or Respondent). You can also decide the arguments help both sides (B) or neither side (N).

1. _____ In 1928, the Supreme Court in *Olmstead v. United States* ruled that telephone wiretaps did not violate the Fourth Amendment because the language of the Amendment protects against unreasonable searches and seizures of tangible property, not conversations. (Precedent can be a powerful argument in our judicial system because judges often attempt to follow previous decisions for the sake of consistency).
2. _____ In *Lewis v. United States*, the Court upheld narcotics obtained by police even though it was from inside a suspect's home, because it was voluntarily made public by the suspect. In *Rios v. United States*, the Court held that concealed narcotics were protected by the Fourth Amendment if the suspect intended for them to be private, even if the suspect was in a public area. Thus, the Fourth Amendment protects people, not areas. (Precedent can be a powerful argument in our judicial system because judges often attempt to follow previous decisions for the sake of consistency).
3. _____ The phonebooths that Katz used were partially made of glass, so that he remained as visible inside as he was when outside in public.
4. _____ Katz didn't intend for his appearance to be kept private, he intended for his voice to be kept private. It was reasonable for him to expect that no one could hear him while inside the phone booth regardless of whether he was visible to the public.
5. _____ When the Fourth Amendment was written, no one could imagine telephone technology and the subsequent capability of law enforcement to penetrate our most personal conversations. The future may hold even more profound advancements in communications technology, photography, listening devices, etc. We must interpret the spirit of the Constitution to apply it to the times, or else our rights could be made meaningless by technology that make its protections inadequate.
6. _____ It's not the job of the Supreme Court to interpret the spirit of the Constitution to update it for our times. That's what the amendment process is for. If courts are not bound by statutory language, then law becomes meaningless, judges become more powerful than the people's elected legislators, and constitutional safeguards will be eroded by the opinions of the day.
7. _____ While the adopters of the Fourth Amendment couldn't have known about wiretapping, they did know about eavesdropping and yet nothing in the language of the Fourth prohibits law enforcement from obtaining evidence by, for example, crouching by a window to hear a conversation on the other side. Wiretapping is nothing more than eavesdropping by telephone.

8. _____ Even if we should interpret the Constitution as liberally as possible to limit the government's power and maximize the individuals protection, that interpretation cannot radically depart from the actual meaning of words. No one has ever thought that a conversation can be "seized". Only physical, tangible things can be seized.

9. _____ While nothing in the Constitution literally enumerates a general right to privacy, the Bill of Right's (first ten Amendments) many protections (free association, freedom from government intrusion of the home, guarantee of fair treatment, etc.) imply a general right to privacy. The Ninth Amendment also states that people retain more rights than those explicitly listed in the Constitution, and the Fourteenth protects those rights against unreasonable government intrusion.



You are a Supreme Court justice hearing the Katz case. Please answer the following questions. REMEMBER TO REFERENCE THE FACTS OF THE CASE AND THE CLASSIFYING ARGUMENTS.

1. Pretend that you are listening to the oral arguments of the attorneys representing Katz. What two questions would you ask?
 - A.
 - B.
2. Pretend that you are listening to the oral arguments of the attorneys representing the U.S. government. What two questions would you ask?
 - A.
 - B.
3. At the conclusion of hearing the case, you have to write a court opinion ruling either in favor of Katz or the government. Remember, if you are ruling in favor of Katz, then you are arguing that warrantless wiretapping is an unreasonable search and seizure under the Fourth Amendment. If you are ruling in favor of the government, then you are arguing that law enforcement did not violate the Fourth Amendment.

_____ Katz _____ U.S. government

Resources

<https://www.oyez.org/cases/1967/35>

<https://constitutioncenter.org/blog/katz-v-united-states-the-fourth-amendment-adapts-to-new-technology/>