

法學譯粹

KATZ v. UNITED STATES*

李正雄**、詹前校***

導言

美國對於人民通訊之保護，係援引憲法第四修正案有關搜索扣押之規定，早期美國聯邦最高法院見解是採用「物理侵入」法則(Physical Trespass Doctrine) — 只要沒有物理上的侵入行為，就不會違反憲法第四修正案的規定；後來在西元 1967 年時，美國聯邦最高法院則改變見解，改以「合理隱私期待」法則(Reasonable Expectation of Privacy)作為民眾通訊保障的標準 — 雖然沒有物理上的侵入行為，只要人民想要保有其隱私，仍然要受憲法的保障。我國通訊保障監察法第七條亦援引此法則。本案即為美國聯邦最高法院推翻過去見解而改採新見解的著名判例。

原文：

Petitioner was convicted under an *indictment* charging him with transmitting wagering information by telephone across state lines in violation of 18 U.S.C. 1084. Evidence of petitioner's end of the conversations, overheard by FBI agents who had attached an electronic listening and recording device to the outside of the telephone booth from which the calls were made, was introduced at the trial. The Court of Appeals affirmed the conviction, finding that there was no *Fourth Amendment* violation since there was "no physical entrance into the area

* 本篇摘錄自美國最高法院判決KATZ v. UNITED STATES, 389 U.S. 347 (1967)，為翻譯之便利，判決原文中之註釋（含大法官協同與不同意見）均未納入。

** 李正雄，美國聖母大學（倫敦法學中心，Notre Dame London Law Centre）法學碩士，前國防部駐美採購組法制官，現任國防部軍法司上校軍法官。

*** 詹前校，國立臺灣大學新聞研究所碩士，國防部軍法司薦任書記官。

occupied by" petitioner. Held:

翻譯：

請求人在起訴中被指控違反美國法典 18 U.S.C. 1084 規定，使用跨州電話線路傳輸賭博資訊，而被判決有罪。聯邦調查局幹員在請求人使用的電話亭外安裝電子監聽錄音設備，竊聽到請求人那一端自該電話亭撥出去的通話內容，該證據在審判庭中被提出。上訴法院維持原有罪判決，因為「在請求人所管領的區域內沒有物理上的侵入」，所以沒有違反憲法第四修正案。本院判決如下：

原文：

1. The Government's *eavesdropping* activities violated the *privacy* upon which petitioner justifiably relied while using the telephone booth and thus constituted a "*search and seizure*" within the meaning of the Fourth Amendment.

(a) The Fourth Amendment governs not only the seizure of tangible items but extends as well to the recording of oral statements. *Silverman v. United States*, 365 U.S. 505, 511 . P. 353.

(b) Because the Fourth Amendment protects people rather than places, its *reach* cannot turn on the presence or absence of a physical *intrusion* into any given enclosure. The "*trespass*" doctrine of *Olmstead v. United States*, 277 U.S. 438 , and *Goldman v. United States*, 316 U.S. 129 , is no longer controlling.

2. Although the *surveillance* in this case may have been so narrowly *circumscribed* that it could constitutionally have been authorized in advance, it was not in fact conducted pursuant to the *warrant* procedure which is a constitutional precondition of such

electronic surveillance.

369 F.2d 130, reversed.

翻譯：

1.美國政府的竊聽活動侵犯了請求人在使用電話亭時所正當信賴的隱私權，因此該當憲法第四修正案中「搜索扣押」的內涵。

(a) 憲法第四修正案所規定的不僅是有體物的扣押，而且擴及於口頭陳述的錄音。(參照 *Silverman v. United States*, 365 U.S. 505, 511 . P. 353.)

(b) 由於憲法第四修正案所保護的是「人」，而不是「地方」，它的範圍不能轉變成任何特定私有空間是否存在物理上的侵入行為。在 *Olmstead v. United States*(277 U.S. 438) 案和 *Goldman v. United States* (316 U.S. 129) 案的判例中所提及的「不法侵入」法則已不再具有拘束力。

2.雖然本案中的監偵行為可能會被很狹隘地定義成具憲法上事先的授權，但是事實上它沒有依據合法的令狀程序進行，那是這類電子監偵行為具合憲性的前提。

上訴法院判決（案號：369 F.2d 130）撤銷。

原文：

Burton Marks and Harvey A. Schneider argued the cause and filed briefs for petitioner. [389 U.S. 347, 348]

John S. Martin, Jr., argued the cause for the United States. With him on the brief were Acting Solicitor General Spritzer, Assistant Attorney General Vinson and Beatrice Rosenberg.

MR. JUSTICE STEWART delivered the opinion of the Court.

翻譯：

Burton Marks 和 Harvey A. Schneider 具狀為請求人辯護。

John S. Martin, Jr.代表美國政府答辯。答辯狀上具名者還包括代理檢察總長 Spritzer、助理檢察官 Vinson 和 Beatrice Rosenberg。

大法官 STEWART 先生陳述本院意見如下：

原文：

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. At trial the Government was permitted, over the petitioner's objection, to introduce evidence of the petitioner's end of telephone conversations, 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, because "[t]here was no physical entrance into the area occupied by [the petitioner]." We granted *certiorari* in order to consider the constitutional questions thus presented.

翻譯：

請求人在加州南區地方法院被起訴八項罪名，而被判決有罪。請求人被控藉由電話，從洛杉磯傳輸賭博資訊到邁阿密和波士頓，違反了聯邦法律。審理時，在請求人的異議下，法院仍允許政府提出請求人打電話的通話內容當作證據，該證據是聯邦調查局幹員在請求人所使用的公共電話亭外，安裝電子監聽錄音設備竊聽所得，在上訴法院維持原有罪判決中，該院駁回有關錄音的取得違反憲法第四修正案

的主張。因為「在請求人所管領的區域內沒有物理上的侵入」，我們核准向上訴法院調取卷證令，以審酌本案所呈現的是否合憲性問題。

原文：

The petitioner has 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.

"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."

翻譯：

請求人所陳述的問題如下：

「A.公共電話亭是否為憲法上所保護的區域，進而得以判定在此電話亭之上方安裝電子監聽錄音設備而取得的證據，是侵犯該電話亭使用者隱私權而取得的。」

「B.在搜索扣押被認為是違反美國憲法第四修正案之前，是否必須對於憲法上所保護的區域存在著物理上侵入。」

原文：

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. Other provisions of the Constitution protect personal privacy from other forms of governmental invasion. But the protection of a person's general right to privacy - his right to be let alone by other people - is, like the protection of his property and of his very life, left largely to the law of the individual States.

翻譯：

我們拒絕採用這些議題的這種陳述方式。首先，憲法第四修正案問題的正確解決之道，並不必要不斷的強調「憲法上所保護的區域」一詞；其次，憲法第四修正案不能被解釋成一般性的憲法「隱私權」。雖然那個修正案保障了個人的隱私，以對抗某種政府侵入行為，不過它的保障是更進一步的，經常會與隱私權一點關係都沒有。憲法上其他的規定保護了個人隱私，以避免政府其他形式的侵犯，但是對於個人一般性隱私權的保障—一個人不被他人打擾的權利—例如對財產和生活的保障，大部分是留給各州的法律去規範的。

原文：

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. 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. 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 ; *United States v. Lee*, 274 U.S. 559, 563 . But what he seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected. See *Rios v. United States*, 364 U.S. 253 ; *Ex parte Jackson*, 96 U.S. 727, 733 .

翻譯：

由於上述議題被以誤導的方式陳述，所以兩造當事人置極大的重點在請求人打電話的電話亭屬性上，請求人激烈地爭論該電話亭是「憲法上所保護的區域」，美國政府方面也以同等激烈的態度，認為它不是憲法上所保護的區域。然而純就理論上探討以決定特定「區域」是否為「憲法上所保護」，卻移轉了對本案所呈現問題應有的注意，因為憲法第四修正案保護的是人民，而非地點。一個人明知其暴露於公眾得接近之下，即使是在他自己的家中或辦公室，也並非憲法第四修正案所要保護的主體（請參照 *Lewis v. United States*, 385 U.S. 206, 210 以及 *United States v. Lee*, 274 U.S. 559, 563 這兩個案例）。不過他想要將其保留為隱私者，即使是在公眾的接近的區域中，也可以受到憲法上的保護（請參照 *Rios v. United States*, 364 U.S. 253 以及 *Ex parte Jackson*, 96 U.S. 727, 733 這兩個案例）。

原文：

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

翻譯：

美國政府強調的事實是，請求人撥打電話的電話亭，部分是由玻璃所建構的，所以他進入電話亭後，仍然可以被看見，在就如同他置身在電話亭之外一樣。不過當他進入電話亭中，他想要排除的並非遭到窺視－他是想排除那些不速之客的耳朵。他並沒有因為打電話的地方可能會被其他人看到，而捨棄他想要排除電話內容被竊聽的權利。一個人在電話亭中，就像在辦公室裡，在朋友的寓所，或者在計程車中一樣，都可以仰賴憲法第四修正案的保障。當某個人進入電話亭中，關上他身後的門，在付費後讓他撥打電話出去，他對著話筒所說的話，當然有權享有不會被廣播到全世界的權利。若是較狹義地解讀憲法，就是忽視公共電話在私人通訊中所扮演的重要角色。

原文：

The Government contends, however, that the activities of its agents in this case should not be tested by Fourth Amendment requirements, for the surveillance technique they employed involved no

physical penetration of the telephone booth from which the petitioner placed his calls. It is true that the absence of such penetration was at one time thought to *foreclose* further Fourth Amendment inquiry, *Olmstead v. United States*, 277 U.S. 438, 457 , 464, 466; *Goldman v. United States*, 316 U.S. 129, 134 -136, for that Amendment was thought to limit only searches and seizures of tangible property. But "[t]he *premise* that property interests control the right of the Government to search and seize has been discredited." *Warden v. Hayden*, 387 U.S. 294, 304 . Thus, although a closely divided Court supposed in *Olmstead* that surveillance without any trespass and without the seizure of any material object fell outside the ambit of the Constitution, we have since departed from the narrow view on which that decision rested. Indeed, we have expressly held that the Fourth Amendment governs not only the seizure of tangible items, but extends as well to the recording of oral statements, over-heard without any "technical trespass under . . . local property law." *Silverman v. United States*, 365 U.S. 505, 511 . Once this much is acknowledged, and once 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.

翻譯：

然而，美國政府所爭執的是，在本案中聯邦調查局幹員進行的活動，不應該用憲法第四修正案的標準來進行檢驗，因為他們所採用的監聽技術，並沒有針對請求人所撥打電話的電話亭涉及物理上的侵入行為，沒有這類侵入行為時，確實曾經被認為不必再受憲法第四修正案的審查（請參考 *Olmstead v. United States*, 277 U.S. 438, 457 , 464,

466 以及 *Goldman v. United States*, 316 U.S. 129, 134 -136 案例)，因為憲法第四修正案被認為僅限於對有體財物的搜索扣押，但是「用財產利益控制政府的搜索扣押權利，這個前提已經被質疑」（參照 *Warden v. Hayden*, 387 U.S. 294, 304）。因此，466 以及 *Goldman v. United States*, 316 U.S. 129, 134 -136 案例)，因為憲法第四修正案被認為僅限於對有體財物的搜索扣押，但是「用財產利益控制政府的搜索扣押權利，這個前提已經被質疑」（參照 *Warden v. Hayden*, 387 U.S. 294, 304）。因此，雖然在 *Olmstead* 案中，對於沒有任何不法侵入以及沒有扣押任何物體的監偵行為，是在憲法規定的範圍之外，關於這點，贊成及反對意見旗鼓相當；但是自此時起，我們跳脫了該判決所倚賴的這種狹隘觀點。的確，我們已經明確地主張憲法第四修正案所規定的不止是有體物的扣押，同時也延伸到口頭陳述的錄音—監聽行為須沒有任何「當地財產法所規定的技術上不法侵入」的（參照 *Silverman v. United States*, 365 U.S. 505, 511），一旦這樣的觀念被承認，而且一旦認同憲法第四修正案是保障人民—而不是只有「地域」—以對抗不合理的搜索扣押，那麼憲法第四修正案的範圍不能變成對於任何特定私有空間是否存在物理上的侵入，這個概念就會變得很明確。

原文：

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.

翻譯：

我們做出如下結論：因為支撐 Olmstead 案和 Goldman 案的基礎已經被我們後來的決定所侵蝕動搖，上述二判例中所闡述的「不法侵入」法則已不再被認為具有拘束力。政府從事電子監聽和錄下請求人談話的活動侵害了請求人在使用電話亭時所正當依賴的隱私權，因此構成憲法第四修正案「搜索扣押」的定義。使用電子設備達到監聽目的，卻未侵入電話亭的外牆，這樣的事實不再具憲法上的意義。

原文：

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, and they took great care to overhear only the conversations of the petitioner himself.

翻譯：

然後，剩下待決定的問題是，本案中所實施的搜索扣押是否符

合憲法上的標準。關於那一方面，美國政府的立場認為聯邦調查局幹員的行為，完全是以可辯護的方式為之：經調查請求人的活動，已經有強烈的可能性，足以認定他違反聯邦法律正在使用系爭電話傳輸賭博訊息給其他州的人時，他們才開始進行電子監偵行為。此外，此監偵行為在範圍上和期間上，都侷限在建構出請求人非法電話通訊內容這個特定目的內，調查局幹員限制他們的監偵行為在請求人使用該電話亭的短暫時間內，並且他們非常謹慎地僅限於監聽請求人自己的談話內容而已。

原文：

Accepting this account of the Government's actions as accurate, it is clear that this surveillance was so narrowly circumscribed that a *duly* authorized *magistrate*, properly notified of the need for such investigation, specifically informed of the basis on which it was to proceed, and clearly apprised of the precise intrusion it would entail, could constitutionally have authorized, with appropriate safeguards, the very limited search and seizure that the Government asserts in fact took place. Only last Term we sustained the validity of such an authorization, holding that, under sufficiently "precise and discriminate circumstances," a federal court may empower government agents to employ a concealed electronic device "for the narrow and particularized purpose of ascertaining the truth of the . . . allegations" of a "detailed factual *affidavit* alleging the commission of a specific criminal offense." *Osborn v. United States*, 385 U.S. 323, 329-330. Discussing that holding, the Court in *Berger v. New York*, 388 U.S. 41, said that "the order authorizing the use of the electronic device" in *Osborn* "afforded similar protections to those . . . of conventional

warrants authorizing the seizure of tangible evidence." Through those protections, "no greater invasion of privacy was permitted than was necessary under the circumstances." Here, too, a similar judicial order could have accommodated "the legitimate needs of law enforcement" by authorizing the carefully limited use of electronic surveillance.

翻譯：

若接受美國政府行為的理由是正確的，這個監偵行為顯然被非常狹隘地定義為：一個經過正當授權的治安法官，如果被適當地通知有進行此調查的需要，被詳細的告知該案的進行基礎，而且被明確地告知監聽所涉及的精確侵入方式，他便可以在採取適當的保護手段下，合憲地授權政府，將它所主張的有限制性搜索扣押付諸實現。我們只有在上一次庭期中支持這樣的授權是合法有效的，並且認為在非常「精準和能辨別（受監聽者）的情形」下，聯邦法院可以賦予政府幹員有權去使用隱藏式的電子設備，「以達到一個狹隘特定目的：確認...證言宣誓書上所指稱犯下特定刑事犯罪的詳細事實之真實性」

（請參考 *Osborn v. United States*, 385 U.S. 323, 329 -330）。本院在 *Berger v. New York*（案號：388 U.S. 41）一案中，討論了上述判決，並表示在 *Osborn* 一案中「授權使用電子設備的命令」，「給予了與傳統扣押有體證物令狀相同的保障」，藉由那些保障，「對於隱私權的侵犯超過必要程度是不被允許的」。在本案中也是如此，透過一個類似的司法命令授權，審慎地限制使用電子監偵設備，可以順應「法律執行上的合法性需求」。

原文：

The Government urges that, because its agents relied upon the decisions in *Olmstead* and *Goldman*, and because they did no more here

than they might properly have done with prior judicial *sanction*, we should *retroactively* validate their conduct. That we cannot do. 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 means consistent with that end. Searches conducted without warrants have been held unlawful "notwithstanding facts unquestionably showing probable cause," *Agnello v. United States*, 269 U.S. 20, 33 , for the Constitution requires "that the deliberate, impartial judgment of a judicial officer . . . be interposed between the citizen and the police" *Wong Sun v. United States*, 371 U.S. 471, 481 -482. "Over and again this Court has emphasized that the mandate of the [Fourth] Amendment requires adherence to judicial processes," *United States v. Jeffers*, 342 U.S. 48, 51 , and that searches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment - subject only to a few specifically established and well-delineated exceptions.

翻譯：

美國政府強烈主張，因為它的調查局幹員信賴在 *Olmstead* 案和 *Goldman* 案中所做出的判決，而且因為他們在這裡的所做所為並沒有超出司法事先認可的適切行為，我們應該追溯地認可他們行為的合法有效性。那是我們無法辦到的。很明顯地，在這個案例中調查局幹員表現出自制的行為。然而無可避免的事實是，這個自制是調查局幹員他們自己設限的，並非司法官員所課予。在開始進行搜索前，他們並沒有被要求提出他們所評估的（進行監聽）相當理由，以受治安法官超然獨立的監督。在搜索行為的本身中，他們不是受到特定法院命令所預先設定的條件，而被強迫去遵守這個精確限制。在完成搜索行動後，他們也沒有被命令要向授權搜索的治安法官詳細地報告所有的扣押物。缺乏這樣的保護措施，本院絕對無法支持一個僅僅基於以下理由的搜索：執法官員合理地預期發現特定犯罪的證據，並且自發地限制他們活動至符合最終目的之最小侵害手段。沒有令狀的搜索已經被判決是不合法的，「儘管事實無疑地具有相當理由」（參照 *Agnello v. United States*, 269 U.S. 20, 33），因為憲法要求「司法官員要介於人民和警方之間，仔細審酌、公正的判斷」（參照 *Wong Sun v. United States*, 371 U.S. 471, 481 -482）。「本院不斷強調（憲法第四）修正案的強制規定要求堅守司法程序」（參照 *United States v. Jeffers*, 342 U.S. 48, 51）；而且沒有法官或治安法官事先同意認可，在司法程序外所發動的搜索，依憲法第四修正案的規定，該行為本身就是無理由的一僅有少數特別建立和詳細規定的例外不在此限。

原文：

It is difficult to imagine how any of those exceptions could ever apply to the sort of search and seizure involved in this case. Even

electronic surveillance substantially *contemporaneous* with an individual's arrest could hardly be deemed an "incident" of that arrest. Nor could the use of electronic surveillance without prior authorization be justified on grounds of "*hot pursuit*." And, of course, the very nature of electronic surveillance *precludes* its use pursuant to the suspect's consent. 翻譯：

殊難想像那些例外中，有任一情形能夠適用到本案所涉及的搜索扣押類型。即使電子監偵行為實質上與對一個人的逮捕行為同時發生時，都很難將該逮捕視為是個「偶發事件」，沒有預先獲得授權而使用電子監偵行為，也很難以「熱追緝¹」為理由，而將其正當化。此外，電子監偵行為的本質上當然排除了獲得嫌疑犯同意後而進行（電子監偵行為）的情形。

原文：

The Government does not question these basic principles. Rather, it urges the creation of a new exception to cover this case. It argues that surveillance of a telephone booth should be *exempted* from the usual requirement of advance authorization by a magistrate upon a showing of probable cause. We cannot agree. *Omission* of such authorization "bypasses the safeguards provided by an objective *predetermination* of probable cause, and substitutes instead the far less reliable procedure of an after-the-event justification for the . . . search, too likely to be subtly influenced by the familiar shortcomings of hindsight judgment." *Beck v.*

¹ 早期美國聯邦最高法院判決認為，在追捕犯罪行為人時，僅限於「熱追緝（Hot pursuit）」之情形可以無令狀進入住宅——若警察追捕嫌疑犯始於公共場所，而在追捕過程中，被迫之嫌疑犯逃入住宅時，警察始得無令狀繼續追捕進入住宅。該法理日後被擴張適用，只要符合下列條件，即可適用「熱追緝」法理：第一，警察有相當理由相信犯罪之發生，且有相當理由相信嫌疑犯在某處所內；第二，情況緊急不及聲請令狀。

Ohio, 379 U.S. 89, 96 .

翻譯：

美國政府並不質疑這些基本原則。反而，它極力主張創造一個新的例外情形以涵蓋本案。它爭辯說，對於電話亭的監偵行為如有相當理由，應該被免於通常須要治安法官事先授權的要求。但我們無法同意，省略這樣的授權行為是「規避了監聽須有相當理由在客觀上預先提供的保障，取而代之的是更不可信賴的事後將搜索程序正當化，如此也可能受到所熟知事後判斷所衍生缺點的微妙影響」(參照 Beck v. Ohio, 379 U.S. 89, 96)。

原文：

And bypassing a neutral predetermination of the scope of a search leaves individuals secure from Fourth Amendment violations "only in the *discretion* of the police."

翻譯：

而且規避了應事前限制搜索範圍這個中立的先決條件，是把侵犯憲法第四修正案的人身安全保障，完全交由「警察的自由裁量。」

原文：

These considerations do not vanish when the search in question is transferred from the setting of a home, an office, or a hotel room to that of a telephone booth. 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," 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.

It is so ordered.

MR. JUSTICE MARSHALL took no part in the consideration or decision of this case.

翻譯：

不論系爭的搜索行為是在居家場合、辦公室或者旅館房間，甚而移轉到電話亭時，這些考量都不會消失，不管人在哪裡，他都應該有權利知道他可以免於不合理的搜索扣押。本案中美國政府調查局幹員忽略了「先行的正當法律程序....那是憲法第四修正案的核心理念」，我們認為這樣的程序是本案中涉及的電子監偵行為合憲性的先決條件。因為在這裡的監偵行為無法符合那個標準，而且因為它導致請求人受到有罪判決，所以這個判決必須被撤銷。

本案判決如上述。

大法官 MARSHALL 先生並未參與和本案有關的任何考量或決定行為。

英文字彙

1. indictment (n.): 起訴書、公訴書

indict (v.): 控告、對...起訴

indiction (n.): 控告、起訴

indictable (adj.): 可被控告的、可被提起公訴的

indictable offense: 公訴罪

indictee (n.): 刑事被告人、受到刑事起訴者

2. Fourth Amendment (n.): 憲法第四修正案
3. eavesdrop (v.): 竊聽
eavesdropper (n.): 竊聽者
eavesdropping (n.): 竊聽
4. privacy (n.): 隱私、隱私權
private (adj.): 私人的、非公開的
5. search and seizure: 搜索及扣押
6. reach (n.): 範圍
7. intrusion (n.): 非法侵入 (或占有) 他人財產
intruder (n.): 侵入者、闖入者
8. trespass (n.): 侵害、侵犯
trespasser (n.): 侵犯者、侵權人
9. surveillance (n.): 監偵行為
10. circumscribe (v.): 限制
11. warrant (n.): 令狀、授權狀、擔保
warrantor (n.): 擔保人、保證人
warrantee (n.): 被保證人
warrantor (n.): 保證人
warrantless arrest: 無令狀逮捕
12. certiorari (n.): (拉丁文)。上級法院調閱下級法院案卷之命令 (調卷令)
13. incantation (n.): 咒語、不斷重複的語句
14. foreclose (v.): 排除、阻止
foreclosure (n.): 終止回贖權
foreclosure sale: 變賣抵押物
15. premise (n.): 前提

16. probability (n.): 可能性
probable expectancy: 合理預期
17. duly (adj.): 正當的
duly adjudged: 依法判決的
18. magistrate (n.): 治安法官
magistrate's certificate: (由司法官、公證官員或其他官員出具的)
財產毀損證明
19. affidavit (n.): 證言宣誓書
20. sanction (n.): 認可
21. retroactively (adv.): 追溯地
retrocession (n.): 交還、歸還; 轉再保險、轉分保
restraint (n.): 自制
restrain (v.): 抑制、控制、監禁
restraining order: 禁止令
22. inescapable (adj.): 無可避免的
inescapable peril: 不可避免的危險
23. impose (v.): 設限、設定負擔
imposed duties: 責任、負擔、義務
24. probable cause: 相當理由
25. scrutiny (n.): 監督、細查
26. observe (v.): 遵守
observer (n.): (出席會議的) 觀察員
27. notwithstanding: 儘管
28. per se: (拉丁文)。本身
per se rule: 本身違法規則、單獨議定規則
per se violations: 自身違法、行為本身違法

29. contemporaneous (adj.): 同時發生的
contemporaneously (adv.): 同時發生地
contemporaneous objection rule: 同時異議原則
contemporaneous construction: 當時解釋
30. hot pursuit: 熱追緝
31. preclude (v.): 排除
preclusion order: 阻卻令、阻止令
32. exempt (v.): 免除、豁免 (責任、義務)
exempt income: 免稅收入、免稅所得
exemption (n.): 財產豁免權、免稅額
exemption clause: 免責條款
33. omission (n.): 省略
34. predetermination (n.): 先決條件
35. discretion (n.): 自由裁量、判斷能力、辨別能力
discretionary act: 任意性行為、裁量行為
36. antecedent (adj.): 先行的、既有的
antecedent claim: 既存請求權
antecedent debt: 先前之債
antecessor (n.): 祖先、祖宗