

Olmstead v. United States and *Katz v. United States*— A Comparative Activity

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For use in conjunction with “Olmstead v. United States: The Constitutional Challenges of Prohibition Enforcement,” by Richard F. Hamm, available at <http://www.fjc.gov/history/home.nsf>. A unit in the Teaching Judicial History Project, developed by the Federal Judicial Center in partnership with the American Bar Association’s Division for Public Education.

Activity Objectives

By comparing two cases involving government surveillance of oral communications, students will explore how the Supreme Court’s interpretation of the Fourth Amendment’s protection against unreasonable searches and seizures has changed over time.

Essential Questions

- Did the prosecution’s use of wiretap evidence in the *Olmstead* case and of eavesdropping evidence in the *Katz* case violate the Fourth Amendment protection against unreasonable searches and seizures?
- How did the Supreme Court’s interpretation of the Fourth Amendment differ in the *Olmstead* and *Katz* decisions?
- What challenges have changes in communications technologies posed for courts in their attempts to define the scope of the Fourth Amendment?
- How have judges applied constitutional principles to factual situations that the Framers could not have anticipated?

Legal Issues Raised by the Cases

In the *Olmstead* and *Katz* cases, the use of evidence obtained by wiretapping and eavesdropping, respectively, raised questions about whether, and under what circumstances, the government’s warrantless interception of oral communications constituted an unreasonable search and seizure in violation of the Fourth Amendment.

Estimated Time Frame

Three or four 50-minute periods.

Recommended Prep Work

Students will need to be familiar with Prohibition as well as the specific events and legal issues involved in the *Olmstead* case. Teachers should review “*Olmstead v. United States: The Constitutional Challenges of Prohibition En-*

forcement,” by Richard F. Hamm, available online at [http://www.fjc.gov/public/pdf.nsf/lookup/olmstead.pdf/\\$file/olmstead.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/olmstead.pdf/$file/olmstead.pdf).

Students will also need to be familiar with the facts and legal issues involved in the *Katz* case as well as the case’s broader historical context, including the Supreme Court’s decisions in the 1960s regarding the rights of criminal defendants and the right to privacy. Teachers may wish to review the short description of *Katz* in the *Olmstead* trial unit (pp. 24–25), as well as “*Katz v. United States*” in *The Oxford Companion to the Supreme Court of the United States, Second Edition* (New York: Oxford University Press, 2005): 554–55, and “Incorporation of the Bill of Rights and the Warren Court’s Criminal Justice Decisions” and “The Right to Privacy” in Morton J. Horowitz, *The Warren Court and the Pursuit of Justice* (New York: Hill and Wang, 1998): 91–98, 106–11.

Make student copies of the following excerpts from the trial unit and the handouts attached to this activity. (*Note:* All page numbers refer to the PDF copy of the unit.)

Excerpts from *Olmstead* Unit

1. Fourth Amendment to the Constitution (p. 43)
2. Briefs submitted to the Supreme Court in *Olmstead v. United States* (pp. 52–58)
3. Majority opinion of the Supreme Court in *Olmstead v. United States* (pp. 59–62)
4. Dissenting opinion of Justice Louis D. Brandeis in *Olmstead v. United States* (pp. 62–65)

Handouts

1. Briefs submitted to the Supreme Court in *Katz v. United States*
2. Majority opinion of the Supreme Court and dissenting opinion of Justice Hugo Black in *Katz v. United States*
3. Newspaper editorials regarding *Olmstead* and *Katz*
4. Worksheets 1, 2, and 3

Description of the Activity

Activity Overview

Students will compare three sets of documents related to warrantless government surveillance of oral communications and the use of intercepted communications as evidence in criminal trials. Students will examine and compare the briefs submitted by the defendant and the prosecution in each case, the majority and dis-

sentencing Supreme Court opinions in each case, and newspaper editorials reflecting various reactions to the outcomes of each case.

Introduction

A brief review of the Fourth Amendment and the historical contexts of the two trials will help students prepare to engage in the activity.

Historical Contexts

- The *Olmstead* case occurred in the context of Prohibition. Review briefly the enactment of Prohibition, the widespread violation of the law, and the problems faced by the police and the federal courts in attempting to enforce the law.
- The *Katz* case took place during the 1960s, when advances in technology enabled more widespread and effective government surveillance and the Supreme Court became increasingly protective of the constitutional rights of criminal defendants and attentive to the issue of personal privacy.

The Fourth Amendment

Have students read the text of the Fourth Amendment to the U.S. Constitution. Ask them to analyze the language of the amendment. What is meant by “persons, houses, papers, and effects”? Can oral communications be considered to fall within the scope of this language? How might courts determine what is “unreasonable” as applied to a search or seizure?

Comparing (1) the Briefs; (2) the Majority and Dissenting Opinions; and (3) the Newspaper Editorials

Have the students read the briefs submitted to the Supreme Court in each case and make sure the students understand the central arguments on each side. Divide the class into small groups to analyze the briefs using Worksheet 1. When the students have completed their assignment, bring them together to discuss their analyses.

In separate class sessions, repeat this process with the second and third sets of documents, using Worksheets 2 and 3.

Assign as homework a brief (two-page) essay answering the essential questions presented at the outset of the activity.

Debrief and Wrap-Up

In a final class discussion following the written assignment, engage students in a discussion of the essential questions. Some other possible questions include: Did the *Olmstead* decision pose a threat to civil liberties? What difficulties might the *Katz* decision have posed for law enforcement officials? How might the concept of a “reasonable expectation of privacy” affect the scope of Fourth Amendment

rights in modern-day cases involving electronic communication and the use of social media?

To illustrate an important issue regarding the potential future of Fourth Amendment rights, teachers may wish to have students conclude the exercise by reading Jonathan Turley, “Supreme Court’s GPS case asks: How much privacy do we expect?,” *Washington Post*, November 11, 2011, available at http://www.washingtonpost.com/opinions/supreme-courts-gps-case-asks-how-much-privacy-do-we-expect/2011/11/10/gIQAN0RzCN_story.html.

Assessment

- Completed worksheets
- Classroom discussion
- Written essay

Alternative Modalities and Enrichment Activities

- Research the evolution of the “stop and frisk” doctrine established in *Terry v. Ohio* (1968)
- Write a brief essay on the meaning of the term “reasonable expectation of privacy” and its implications for the future of Fourth Amendment rights
- Watch an episode of a TV crime drama, such as *Law & Order*, to observe the depiction of Fourth Amendment issues in popular culture, and make an oral report to the class

Involving a Judge

Invite a judge to discuss how the scope of the Fourth Amendment’s protection against unreasonable searches and seizures has changed since the *Katz* decision, particularly in the post-9/11 era and in response to the rise of social media.

Standards Addressed

U.S. History Standards (Grades 5–12)

Era 7 – The Emergence of Modern America (1890–1930)

Standard 3A: The student understands social tensions and their consequences in the postwar [World War I] era.

Era 9 – Postwar United States (1945 to early 1970s)

Standard 4C: The student understands the Warren Court’s role in addressing civil liberties and equal rights.

Standards in Historical Thinking

Standard 1: Chronological Thinking

- A. Distinguish between past, present, and future time.
- B. Identify the temporal structure of a historical narrative or story.

Standard 2: Historical Comprehension

- A. Identify the author or source of the historical document or narrative and assess its credibility.
- C. Identify the central question(s) the historical narrative addresses.
- F. Appreciate historical perspectives.

Standard 3: Historical Analysis and Interpretation

- A. Compare and contrast differing sets of ideas, values, etc.
- B. Consider multiple perspectives.
- C. Analyze cause-and-effect relationships.
- D. Draw comparisons across eras and regions in order to define enduring issues.

Standard 5: Historical Issues-Analysis and Decision-Making

- A. Identify issues and problems in the past.
- D. Evaluate alternative courses of action.
- E. Formulate a position or course of action on an issue.
- F. Evaluate the implementation of a decision.

Handout 1

Briefs Submitted to the Supreme Court in *Katz v. United States*

Brief for the Petitioner, Charles Katz v. United States of America, 389 U.S. 347 (1967) (No. 35)

...[I]t is now clear that the recent decisions of this Court unequivocally indicate that the primary concern of the Fourth Amendment is the protection of the individual's right to privacy. . . . In *Warden [, Maryland Penitentiary v. Hayden]*, this Court stated:

“...We have recognized that the principal object of the Fourth Amendment is the protection of privacy rather than property, and have increasingly discarded fictional and procedural barriers rested on property concepts. . . .”

...

Assuming the undeniable premise that the primary concern of the Fourth Amendment is the individual's right to privacy, it can at once be seen that the inquiry as to whether or not a physical trespass has occurred is no longer relevant in discussing a search and seizure issue and, to the extent that *Goldman v. United States, supra*, stands for such a proposition, it must be overruled. If there has been an actual invasion or an attempt to intrude into a constitutionally protected area, a person's right to privacy has been violated and the fact that there was or was not physical penetration of that area is irrelevant. The crucial inquiry as applied to the instant case is, therefore, whether a public telephone booth is a constitutionally protected area so that an interception of Petitioner's calls while an occupant thereof constituted an invasion of his constitutionally protected right to privacy.

...

When the now discredited physical trespass theory is abandoned in favor of one stressing the right to privacy, it is possible to suggest a workable test to be employed in determining whether or not a specific area is protected by the Fourth Amendment. This test merely turns on the answer to the question: “Does the area in question have the ‘attributes of privacy?’” (*Lanza v. New York, supra*) or, said in another way, “Would the average reasonable man believe that the person whose conversation had been intercepted intended and desired his conversation to be private?” Under this test the degree of privacy afforded by a facility would be one criterion in determining the degree of privacy protected. For example, a conversation held in a telephone booth having a door would be entitled to more privacy, and thus more constitutional protection, than a conversation held in an open booth in a crowded building or area.

When examined in light of this proposed test, there is little room for doubt that a public telephone booth with a door [as in the instant case] is and should be a constitutionally protected area. In using the booth, a person, in return for paying a set toll, expects and intends his conversation to be unmonitored and private and further expects to be in complete control of the degree of privacy his conversation will have. Since the protection of the Fourth Amendment has been held by this Court to include a business office, a store, a hotel room, an automobile, and an occupied taxicab [case citations omitted], it would be unreasonable to suggest that any less protection should be afforded to the user of a closed door telephone booth. Surely he has the same right to exclusive control and use as does the taxicab occupant.

[Document Source: *Katz v. United States*, 389 U.S. 347 (1967), 1967 Westlaw 113605.]

Brief for the Respondent, Charles Katz v. United States of America, 389 U.S. 347 (1967) (No. 35)

The admission into evidence of recordings of petitioner's end of telephone conversations, obtained by F.B.I. agents placing a recorder and microphones on top and on the sides of the row of public telephone booths from which petitioner made calls, did not infringe the Fourth Amendment. No trespass or physical invasion of the booths was committed under *Goldman v. United States*, 316 U.S. 129, and *Silverman v. United States*, 365 U.S. 505, by the placing of the electronic device. Moreover, apart from any question of trespass, the row of public telephone booths from which petitioner made calls was not within the traditional concept of a "constitutionally protected area." Booths on a public street bear little resemblance to areas where the right of privacy has been held to inhere (*e.g.*, a home, office, hotel room, or private car).

But even if the test of trespass, as exemplified by *Goldman*, is discarded, and even if this Court holds further that public booths of the kind involved in this case are entitled to some measure of protection under the Fourth Amendment, the question would remain: In the instant circumstances, was the search unreasonable?

In response, we stress these considerations. A row of public telephone booths, if "protected" at all, is not entitled to the same degree of protection as a home. As a result of extended investigation prior to the conduct of the surveillance at issue, the agents had strong "probable cause" to believe that petitioner was making his calls in order to obtain and transmit gambling information. The conversations which they monitored were themselves the essence of the federal crime under investigation. Finally, thorough precautions were taken to insulate the conversations of other members of the public from intrusion.

...

The rights of privacy reflected in the guarantees of the Fourth Amendment must be measured in terms of the reasonable expectations of a person in a given location that he is free from scrutiny. Thus a field and a public street are not normally places where a man may legitimately anticipate that he will not be observed [case citations omitted].

A row of public telephone booths, we submit, is not significantly different. Although the occupant is alone in a booth, he is normally visible to persons outside it . . . In addition the booth, even when the door is closed, is not designed to be soundproof but merely to shut out sufficient sound to enable the parties to hear each other with comparative ease. . . . There is little basis for suggesting that the degree of privacy which petitioner could reasonably expect to enjoy in the booths was comparable to that which he could expect (and demand) in his home. . . . Under these circumstances he cannot claim that he is constitutionally protected from overhearing, regardless of the means by which it was accomplished.

...

But even if the row of telephone booths from which petitioner placed his calls is deemed to be entitled to some degree of protection under the Fourth Amendment and this Court determines to overrule *Goldman*, we submit that in the particular circumstances of this case the search was not “unreasonable” . . .

Even if a public telephone booth is deemed to be in a constitutionally protected area, we submit that the standards to be applied in determining the reasonableness of the search here involved should not be as strict as those that would apply to the search of a private house. The concept that the standards of reasonableness may vary depending upon the type of constitutionally protected area involved is not novel. . . .

...

...The search at issue was based on ample probable cause, was carefully circumscribed, and involved only a public telephone booth in which a crime was then and there being committed. The approval by this Court of the careful law enforcement efforts found in this case will not jeopardize the privacy of “the citizen who has given no good cause for believing he is engaged in [illegal] activity” [case citation omitted].

[Document Source: *Katz v. United States*, 389 U.S. 347 (1967), 1967 Westlaw 113606.]

Worksheet 1

Comparing the Briefs in *Olmstead* and *Katz*

1. How did the defendants in each case define the rights protected by the Fourth Amendment?
2. Did the defendants in either case argue that the Supreme Court should abandon its prior decisions and change the law, and, if so, on what grounds?
3. What role, if any, did the concept of a person's "expectation of privacy" play in the defendants' arguments in each case?
4. How did the prosecution in each case interpret the rights protected by the Fourth Amendment?
5. Of what relevance to the defendants' and the prosecutions' arguments in each case was the physical location where the intercepted conversations took place?

Handout 2

Majority and Dissenting Opinions in *Katz v. United States*

Justice Potter Stewart, *Opinion of the Court, Charles Katz v. United States of America*, 389 U.S. 347 (1967)

...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 [case citations omitted]. But what he seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected [case citations omitted].

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.

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, 124-136, 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

...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.

...

[The Government] 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.

...

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.

[Document Source: *Katz v. United States*, 389 U.S. 347 (1967).]

Justice Hugo Black, Dissenting Opinion, Charles Katz v. United States of America, 389 U.S. 347 (1967)

If I could agree with the Court that eavesdropping carried on by electronic means (equivalent to wiretapping) constitutes a "search" or "seizure," I would be happy to join the Court's opinion....

My basic objection is twofold: (1) I do not believe that the words of the [Fourth] 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 first clause protects "persons, houses, papers, and effects, against unreasonable searches and seizures..." 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." A conversation overheard by eavesdropping, whether by plain snooping or wiretapping, is not tangible and, under the normally accepted meanings of the words, can neither be searched nor seized. In addition the language of the second clause indicates that the Amendment refers not only to something tan-

gible so it can be seized but to something already in existence so it can be described. Yet the Court's interpretation would have the Amendment apply to overhearing future conversations which by their very nature are nonexistent until they take place. How can one "describe" a future conversation, and, if one cannot, how can a magistrate issue a warrant to eavesdrop one in the future? It is argued that information showing what is expected to be said is sufficient to limit the boundaries of what later can be admitted into evidence; but does such general information really meet the specific language of the Amendment, which says "particularly describing"? Rather than using language in a completely artificial way, I must conclude that the Fourth Amendment simply does not apply to eavesdropping.

...

I do not deny that common sense requires and that this Court often has said that the Bill of Rights' safeguards should be given a liberal construction. This principle, however, does not justify construing the search and seizure amendment as applying to eavesdropping or the "seizure" of conversations. The Fourth Amendment was aimed directly at the abhorred practice of breaking in, ransacking and searching homes and other buildings and seizing people's personal belongings without warrants issued by magistrates. The Amendment deserves, and this Court has given it, a liberal construction in order to protect against warrantless searches of buildings and seizures of tangible personal effects. But until today this Court has refused to say that eavesdropping comes within the ambit of Fourth Amendment restrictions. See, e.g., *Olmstead v. United States*, 277 U.S. 438 (1928), and *Goldman v. United States*, 316 U.S. 129 (1942).

...

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. . . .

...

. . . No general right is created by the Amendment so as to give this Court the unlimited power to hold unconstitutional everything which affects privacy. . . .

[Document Source: *Katz v. United States*, 389 U.S. 347, 364 (1967).]

Worksheet 2

Comparing the Opinions in *Olmstead* and *Katz*

1. How did the majority opinion in each case define Fourth Amendment rights? How did the *Katz* majority's definition of those rights lead to a different result than the *Olmstead* majority reached?
2. How, if at all, did the concept of property rights factor into the majority's decision in each case?
3. How, if at all, did the concept of a person's "expectation of privacy" factor into the majority's decision in each case?
4. Under what circumstances would the *Katz* majority have found the law enforcement agency's surveillance of Katz to be "reasonable" and therefore not a violation of his Fourth Amendment rights?
5. How did Justice Brandeis's dissent in *Olmstead* and Justice Black's dissent in *Katz* characterize the nature of Fourth Amendment rights? How did their formulations of those rights lead each justice to disagree with the majority opinion in his respective case?

Handout 3

Newspaper Editorials Regarding *Olmstead* and *Katz*

Olmstead Editorials

The Wire-Tapping Case

The decision of the United States Supreme Court in the wire-tapping case, while undoubtedly disappointing to the public, is based upon law. Before the people make haste to condemn the majority opinion, let them study it. They will find that the majority and minority do not differ in their abhorrence of the offense against decency that is committed when law officers tap telephone wires running into private homes. The majority, however, stand upon established law, which admits evidence without regard to the unlawful manner in which the evidence may have been obtained.

The fact that wire-tapping is a misdemeanor in many States does not obscure the point at issue, which is that evidence thus obtained is admissible under the law.

...

If the people of the United States wish to make telephone and telegraph messages inviolable they can accomplish the purpose by commanding Congress to enact a law that will make inadmissible in Federal criminal trials any evidence obtained by unlawful interception of these messages....The people must decide whether they wish to make the rule of privacy so rigid as to shield criminals as well as innocent persons. Judging by the rule that applies to letters passing through the mails, the people would, if they could, throw about telephone and telegraph messages the inviolable privacy that attaches to a letter in the mails. But the mails are carried by the Government itself, which in a sense is a trustee for the sender and the recipient, and Federal law makes a letter inviolable. The opening of private mail by postal officials, for espionage purposes, would be an intolerable invasion of private right. Telegraph and telephone messages, however, are transmitted by private corporations and there is no Federal law protecting the privacy of these messages.

[Document Source: *Washington Post*, June 6, 1928.]

Government Lawbreaking

...Constitutions must take care of the future. They must meet modern conditions and purposes. Otherwise they sink into formulas. The Supreme Court has declared this doctrine more than once. Here is a great modern device, a necessary of modern life and business, used by millions. Science, as Mr. Justice Brandeis says, may bring in new means of spying.

He quotes James Otis. If there were a James Otis today, he would applaud these words:

Whenever a telephone wire is tapped, the privacy of the persons at both ends of the line is invaded and all conversations between them upon any subject, and although proper, confidential and privileged, may be overheard. . . . As a means of espionage, writs of assistance and general warrants are but puny instruments of tyranny and oppression when compared with wire-tapping.

Years ago Mr. Brandeis, then a young lawyer, defended the right of privacy. How much of it is left now? As for the Government's patronage of and responsibility for criminal espionage, Mr. Justice Brandeis says:

If the Government becomes a law-breaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy.

"A dirty business," says Mr. Justice Holmes unfeelingly. Prohibition, having bred crimes innumerable, has succeeded in making the Government the instigator, abettor and accomplice of crime. It has now made universal snooping possible.

[Document Source: *New York Times*, June 6, 1928.]

Katz Editorials

Bug Control

The United States Supreme Court has now made it clear that its interpretation of the search and seizure provisions of the Fourth Amendment does not extend to prohibiting all use of electronic bugging devices by law-enforcement officials.

Without retreating from its sound position that the incredibly sensitive equipment now available for eavesdropping requires rigid restrictions, the Court has given an implied green light for bugging under meticulously defined judicial restraint. The way is now open for the adoption by New York and other states of laws that will provide balanced protection both for individual liberties and for the efficient conduct of the war against organized crime.

The Law Revision Commission in this state already is well advanced on preparation of a statute designed to satisfy these twin requirements....

...Our own belief is that the Supreme Court's invalidation last summer of the old New York wiretapping statute and the ambiguity that now surrounds any use of bugging devices make it essential that the Legislature adopt the new standards without delay. The rights of the community and of the individual will be better safeguarded when the current vacuum of law is removed.

[Document Source: *New York Times*, December 22, 1967.]

New Protection for Privacy Right

The court specifically excluded [from its ruling in *Katz*] cases in which the national security is involved and indicated that any other eavesdropping should be used only in a judicially approved way and on a limited scale. We suggest it not be used at all except in security matters.

President Johnson has called for just such a ban on public and private snooping. Some law enforcement officials vigorously oppose any such prohibition. They insist that there should be a relaxation of eavesdropping regulations.

Although we can sympathize with the peace officers, The Times agrees with the President. The right of privacy is paramount.

Electronic snooping presents more perils to the individual than it does promise of improved law enforcement. Furthermore, there always exists a possibility of misuse of information obtained by eavesdropping, in whatever manner, even when carried out under court controls.

The Administration's measure should be pushed to enactment in the second session of the 90th Congress. Meanwhile the Supreme Court decision is a welcome added protection for the rights of the citizenry.

[Document Source: *Los Angeles Times*, December 19, 1967.]

Worksheet 3

Comparing the Editorials Regarding *Olmstead* and *Katz*

1. What was the primary focus of the two editorials written about the *Olmstead* decision in 1928? On what points did the editorials agree with each other? On what points did they disagree?
2. How might the 1928 editorials have been written differently if the wire-tapping in *Olmstead* had not violated a state law?
3. How, if at all, do the two editorials written about the *Katz* decision in 1967 reflect views about government wiretapping and eavesdropping similar to those expressed in the *Olmstead* editorials? How, if at all, do the latter editorials suggest that societal views about government surveillance may have changed over the preceding 40 years?
4. What, according to the two editorials written in 1967, was the practical impact of the *Katz* decision? How did the editorials disagree about what course of action the government should take regarding surveillance?