MR. JUSTICE HARLAN, concurring.

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, *Weeks v. United States*, 232 U. S. 383, and unlike a field, *Hester v. United States*, 265 U. S. 57, 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, Page 389 U. S. 361 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.

As the Court's opinion states, "the Fourth Amendment protects people, not places." The question, however, is what protection it 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. *Cf. Hester v. United States, supra.*

The critical fact in this case is that "[o]ne who occupies it, [a telephone booth] shuts the door behind him, and pays the toll that permits him to place a call is surely entitled to assume" that his conversation is not being intercepted. *Ante* at 389 U. S. 352. The point is not that the booth is "accessible to the public" at other times, *ante* at 389 U. S. 351, but that it is a temporarily private place whose momentary occupants' expectations of freedom from intrusion are recognized as reasonable. *Cf. Rios v. United States*, 364 U. S. 253.

In *Silverman v. United States*, 365 U. S. 505, we held that eavesdropping accomplished by means of an electronic device that penetrated the premises occupied by petitioner was a violation of the Fourth Amendment. Page 389 U. S. 362

That case established that interception of conversations reasonably intended to be private could constitute a "search and seizure." and that the examination or taking of physical property was not required. This view of the Fourth Amendment was followed in *Wong Sun v. United States*, 371 U. S. 471, at 371 U. S. 485, and *Berger v. New York*, 388 U. S. 41, at 51. *Also compare Osborn v. United States*, 385 U. S. 323, at 385 U. S. 327. In *Silverman*, we found it unnecessary to reexamine *Goldman v. United States*, 316 U. S. 129, which had held that electronic surveillance accomplished without the physical penetration of petitioner's premises by a tangible object did not violate the Fourth Amendment. This case requires us to reconsider *Goldman*, and I agree that it should now be overruled. * Its limitation on Fourth Amendment protection is, in the present day, bad physics as well as bad law, for reasonable expectations of privacy may be defeated by electronic as well as physical invasion.

Finally, I do not read the Court's opinion to declare that no interception of a conversation one-half of which occurs in a public telephone booth can be reasonable in the absence of a warrant. As elsewhere under the Fourth Amendment, warrants are the general rule, to which the legitimate needs of law enforcement may demand specific exceptions. It will be time enough to consider any such exceptions when an appropriate occasion presents itself, and I agree with the Court that this is not one.

* I also think that the course of development evinced by *Silverman. supra, Wong Sun., supra, Berger, supra,* and today's decision must be recognized as overruling *Olmstead v. United States,* 277 U. S. 438, which essentially rested on the ground that conversations were not subject to the protection of the Fourth Amendment.