

INTERVIEW WITH HARVEY A. SCHNEIDER

Lawyer for Charles Katz on Appeal

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Mr. Schneider called me on the telephone in response to my inquiries about his role in the *Katz v. United States* case. The following is a summary of the information I gathered from that interview.

Harvey A. Schneider was just a few years out of law school when he began work on the *Katz* case. Schneider was practicing law in a private firm with Burton Marks who is now deceased. Marks had handled the court trial of Charles Katz who was charged with keeping an illegal sports gambling book. Katz was convicted and sentenced to pay a \$300 fine. After Katz's conviction, Schneider began helping Marks with appeals on the case. Schneider never actually met Katz, but he knew a little about him. Katz was around 50 years old at the time of the case in the late 1960s and was a professional wagerer. Marks and Schneider were the only two lawyers in the firm and represented Katz from his trial all the way to the Supreme Court decision.

While working on a brief for Katz, Schneider thought about the binding interpretation of the Fourth Amendment as it was and felt it did not make sense. At that time the Supreme Court had always interpreted the Fourth Amendment's protections in terms of protected areas. For example, a person's private conversations within his/her apartment were protected insofar as the apartment itself was protected. The area of the apartment was only protected from microphones that somehow pierced or were located inside of the wall and not amplifying microphones that were pressed to the outside of a wall. Schneider recalled the "reasonable man test" from his studies of tort law in law school and thought it could replace the interpretation based on protected areas. With such a standard, the debate in *Katz* would be about whether reasonable people would decide that Katz had an expectation of privacy in his particular situation. Such an objective standard, Schneider thought, would remove some of the outdated arbitrariness from Fourth Amendment law.

More amenable to such new interpretations, the Warren Court adopted the basis of Schneider's theory and it became law. As Schneider now acknowledges, subsequent courts have chipped away at the *Katz* doctrine and have succeeded in weakening it. Still, the accomplishment of developing a functional test for the constitutionality of government searches should not be overlooked. Even during the Warren Court's "due process revolution," such landmark cases did not occur as a matter of course.

Following the *Katz* case, Harvey Schneider remained in private practice until 1976 when he was appointed as a federal magistrate. Then, Schneider went back to private practice from 1980-1988. In 1988, he was elected a California Superior Court judge, where he served until 2000. He now does private judging in California.