

MODULE 2:
THIRD PARTY DOCTRINE AND CSLI ANALYSIS
DIKRAN MELKONIAN
JANUARY 25, 2021

The Fourth Amendment provides that “the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated”(Carpenter v US). Cell phone technology, and its increasing evolution, continues to provide challenges to governments’ criminal investigations versus protection of individual privacy rights.

Chief Justice Roberts authored the majority opinion in Carpenter vs United States where he explained, “A person does not surrender all Fourth Amendment protection by venturing into the public sphere. To the contrary, what one seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected. Individuals have a reasonable expectation of privacy in the whole of their physical movements” (Carpenter v US).

The Court in the Carpenter case went contrary to its 1976 ruling of United States vs Miller, where Miller’s bank records and transactions were legally obtained by the government. “The Supreme Court noted that the Fourth Amendment does not prohibit government authorities from requesting and obtaining information entrusted to a third party, even if the defendant provided the information to the third party on the assumption it would be used only for a limited purpose” (Dixon).

In a 1979 case, Smith vs Maryland, the police used a pen register to track Smiths threatening calls. “The Supreme Court ruled that the installation of a pen register by the telephone company, at the request of government agents, is not a search under the Fourth Amendment” (Dixon). Using the third-party doctrine, the Court determined that Smith “voluntarily conveyed” and “exposed the information to its

equipment in the normal course of business,” therefore assuming the risk by using the phone service (Dixon).

Roberts explained, “Whether the Government employs its own surveillance technology...or leverages the technology of a wireless carrier, we hold that an individual maintains a legitimate expectation of privacy in the record of his physical movements as captured through CSLI” (Carpenter v US). Roberts further explains, “There is a world of difference between the limited types of personal information addressed in Smith and Miller and the exhaustive chronicle of location information casually collected by wireless carriers today.” (Carpenter v US).

I disagree with Roberts and the Courts majority opinion and side with Chief Justice Kennedy’s Dissent in this matter. The technology of tracking a subject based on his cell phone is a reality. However, “If you give information to a bank, to a phone company, to a credit union; if you voluntarily disclose arguably private information to a third party, you have waived your Fourth Amendment protection” (Begovich).

“Cell-site records, however, are no different from the many other kinds of business records the Government has a lawful right to obtain by compulsory process. Customers...do not own, possess, control, or use the records, and...have no reasonable expectation that they cannot be disclosed pursuant to lawful compulsory process...Carpenter can ‘assert neither ownership nor possession’ of the records and has no control over them (Carpenter v US).

WORKS CITED:

Begovich, Michael. "Presentation 2.1: Privacy Rights & Cell Site Location Information 2.1." University of San Diego, 2021, learn-us-east-1-prod-fleet02-xythos.content.blackboardcdn.com/5c2103143e6a3/6127934?X-Blackboard-Expiration=1611630000000&X-Blackboard-Signature=J6ISca6SmECSOd5G1ezN83U1E8%2F3WVzY3Rvdl8W%2F%2FHU%3D&X-Blackboard-Client-Id=962616&response-cache-control=private%2C%20max-age%3D21600&response-content-disposition=inline%3B%20filename%2A%3DUTF-8%27%27M2_Podcast%25202.1_Part1%2520Transcript.pdf&response-content-type=application%2Fpdf&X-Amz-Algorithm=AWS4-HMAC-SHA256&X-Amz-Date=20210125T210000Z&X-Amz-SignedHeaders=host&X-Amz-Expires=21600&X-Amz-Credential=AKIAZH6WM4PL5SJBSTP6%2F20210125%2Fus-east-1%2Fs3%2Faws4_request&X-Amz-Signature=862f10074e6908184547daaac7203b78fd693b64937302438187bce03af26034.

"Carpenter v. United States (2018) 138 S.Ct. 2206." LexisNexis, 18 Dec. 2018, learn-us-east-1-prod-fleet02-xythos.content.blackboardcdn.com/5c2103143e6a3/2546949?X-Blackboard-Expiration=1611608400000&X-Blackboard-Signature=wOzStIW3ptK%2BF4J5bSwNL5UbZ3HUVluIRLrelka6WO4%3D&X-Blackboard-Client-Id=962616&response-cache-control=private%2C%20max-

age%3D21600&response-content-
disposition=inline%3B%20filename%2A%3DUTF-8%27%27M2_Carpenter_v
US.pdf&response-content-type=application%2Fpdf&X-Amz-Algorithm=AWS4-
HMAC-SHA256&X-Amz-Date=20210125T150000Z&X-Amz-
SignedHeaders=host&X-Amz-Expires=21600&X-Amz-
Credential=AKIAZH6WM4PL5SJBSTP6%2F20210125%2Fus-
east-1%2Fs3%2Faws4_request&X-Amz-
Signature=c7e23822058cbb213e22c78fba9a05c99372051293cbd7c12b49d965
38b8fa55.

Dixon, Judge Herbert B. "Telephone Technology versus the Fourth Amendment."

American Bar Association, 2016, www.americanbar.org/content/dam/aba/publications/judges_journal/vol55no2-jj2016-tech.pdf.