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Supreme Court Tells Police 'Get A Warrant' For Phone Searches

By Tony Mauro

June 25, 2014

The U.S. Supreme Court's landmark decision protecting cellphone privacy sent a strong signal on Wednesday that the admittedly low-tech justices grasp the profound changes that the Information Age has wrought.

"Modern cell phones are not just another technological convenience. With all they contain and all they may reveal, they hold for many Americans 'the privacies of life,' " Chief Justice John Roberts Jr. wrote for the court. He added that cellphones and smartphones are "now such a pervasive and insistent part of daily life that the proverbial visitor from Mars might conclude they were an important feature of human anatomy."

Ruling in *Riley v. California* and *United States v. Wurie*, the court said that with rare exceptions, the Fourth Amendment requires that police obtain a search warrant to probe the contents of modern-day phones in the possession of arrestees. Rejecting government assertions of the need for quick access to phone contents, the court stressed the damage to personal privacy that would result from police seizure of devices that "place vast quantities of personal information literally in the hands of individuals."

In tone and substance, Roberts' decision seemed aimed at giving the court's acknowledgement, if not blessing, to a new American era—much as *Reno v. ACLU* in 1997 commemorated the birth of the Internet, comparing it then to the colonial "town crier" deserving of full First Amendment protection.

Wednesday's ruling was similar in retrofitting modern technology to the intention of the Constitution's framers. Because of the vast data stored on phones, searching them could yield the same information that British soldiers could obtain by rummaging through a colonial home, the court suggested.

Though it may be unknowable until a current justice's papers are revealed years from now, it seemed possible that Roberts worked hard to keep the case for himself and to achieve unanimity because of its landmark importance—as predecessors including Earl Warren sometimes did.

Justice Samuel Alito Jr. on Wednesday issued a brief concurrence with a different take on some aspects, but he agreed with the need for a clear rule for cellphone searches.

Criminal cases often divide the court, Ilya Shapiro of the Cato Institute noted. But "here we have a loud and unified 'bright-line rule' that sets a major standard for the digital age. Kudos to the court—and raspberries to the federal government," he said.

American Civil Liberties Union legal director Steven Shapiro on Wednesday called the ruling revolutionary. "We have entered a new world but, as the court today recognized, our old values still apply and limit the government's ability to rummage through the intimate details of our private lives," Shapiro said.

Fred Cate, professor at Indiana University Maurer School of Law–Bloomington, said the ruling is of "staggering importance in modernizing privacy law and restraining overreaching law enforcement."

In previous Fourth Amendment rulings, the court has made exceptions to the warrant requirement to allow police to search arrestees' belongings "incident to arrest," to insure their safety and guard against destruction of evidence.

Solicitor General Donald Verrilli Jr.'s brief said cellphones were "materially indistinguishable" from wallets and cigarette packs that the court has allowed police to search. But Roberts made short shrift of that comparison. "That is like saying a ride on horseback is materially indistinguishable from a flight to the moon," Roberts wrote, "Both are ways of getting from point A to point B, but little else justifies lumping them together."

During oral argument, Deputy Solicitor General Michael Dreeben argued that taking the time to obtain a search warrant for a cellphone could enable arrestees' companions to erase or encrypt phone data from a remote location, thereby destroying potential evidence.

Roberts rejected that argument as well, noting that police could prevent erasure by turning off the phone or placing them into aluminum foil "Faraday bags," which block radio waves.

"As a result of this decision, Faraday bags likely will become more prevalent in law enforcement officers' squad cars and pockets, and regular people can feel more secure that a neutral magistrate will be involved before anyone searches their phones after an arrest," said Tillman Breckenridge of Reed Smith, author of a brief in the Riley case alerting the justices to use of the bags.

As sweeping as the decision was in requiring search warrants for cellphone searches, Roberts also emphasized that in "exigent circumstances"—such as a "now or never" threat of imminent erasure of a phone's contents—police could act to secure potential evidence.

In the California case before the court, San Diego police in 2009 detained David Riley for driving with expired tags. Police searched the car and found two concealed firearms and seized Riley's smartphone without a warrant. Stored text messages as well as photos and video led police to believe Riley had gang connections.

The other case originated in Boston, where police in 2007 arrested Brima Wurie on drug-trafficking charges. Without first obtaining a warrant, officers went through the call log on his older-model "flip phone" to help locate where drugs were kept.