



## **A bogus bid to create a new form of cellphone privacy**

Betsy McCaughey

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Next time you set out to commit armed robbery, leave your cellphone home. Timothy Carpenter was convicted of stealing smart phones from a string of T-Mobile and Radio Shack stores. But he wasn't too smart himself. He used his cellphone to call 15 various getaway drivers during the spree.

The calls were his undoing. The FBI was able to use records from his wireless carrier to confirm his proximity to every robbed store when it was hit.

Now Carpenter and the American Civil Liberties Union are challenging the conviction, arguing cellphone records are private. The Supreme Court just agreed to hear the case.

Activists determined to guarantee total privacy to criminal suspects, no matter what the cost to society, are thrilled. They're predicting *Carpenter v. United States* could be a landmark victory for privacy.

How foolish. A victory for Carpenter would tip the scales of justice in favor of criminals and against law enforcement's ability to keep us safe.

The ACLU claims using wireless companies' records to pinpoint suspects' locations violates the Fourth Amendment's privacy protections. Don't fall for it.

The Supreme Court already has ruled the actual content of cellphones — names, messages, etc. — cannot be searched without a court-issued warrant, because the Fourth Amendment bars "unreasonable" searches by government. But in *Carpenter*, the ACLU is stretching the notion of privacy, trying to block police from identifying a cellphone's location. Not its content, just its location.

*Carpenter v. United States* is part of the ACLU's campaign to hobble police and shield wrongdoers — both terrorists and common criminals — from the latest technologies available to law enforcement.

In the Carpenter case, the ACLU insists the FBI overreached by looking at many months of Carpenter's phone records, revealing where he prayed, slept and shopped. But how else could agents find out whether he was near the robbed stores? Carpenter's spree went on for months.

Lawyers defending the FBI say phone records are vital for "promptly apprehending criminals and exonerating innocent suspects as early as possible."

They also argue Carpenter had no reason to expect his phone records would be private. Anyone who signs up for a cellphone knows the phone company — a third party — will have call records. They're not private. Nor are call records from a landline phone, according to a 1979 Supreme Court ruling, and for the same reason. The information has already been shared with the phone company.

Not so fast, said Justice Sonya Sotomayor in a previous case. Sotomayor suggested that "it may be necessary to reconsider the premise" that there is no privacy right once someone gives information to a third party like the phone company. If other justices agree with Sotomayor, the Court could ultimately bar the use of cellphone records without a warrant.

Privacy purists across the political spectrum — including the libertarian Cato Institute — are lining up against law enforcement. They argue that the Fourth Amendment guarantees that Americans are "secure in their persons, houses, papers and effects" from unreasonable searches. That's a precious right.

But as the store owners robbed by Carpenter will tell you, there's also a need to be secure from criminals.

Not to mention terrorists.

The Carpenter case involves records of calls made in the past. What about new technology police departments are using to track cellphone locations in real time that can track fugitives, find abducted children, even foil terrorist attacks.

It's a suitcase-size device called a Stingray that mimics cell towers. When it's moved to an area, cellphones send signals to it, mistaking it for a tower. Stingrays literally fool the phones into becoming tracking devices. It was developed by the military, and some object to its use to catch common criminals.

The ACLU is urging dozens of cities, including New York, to clamp down on their use of Stingrays and is going to court in some cities to stop it. NYPD Deputy Commissioner Larry Byrne calls the ACLU's campaign against high-tech law enforcement "very misguided."

Who's helped when wrongdoers have better technology than cops? That's one of the questions the justices will weigh in Carpenter. And in many future cases, as new technologies test the meaning of the Fourth Amendment.