

Third Party Doctrine and CSLI Analysis

In *Carpenter v. the U.S.*, I concur with Justice Robert's majority opinion whereby he states, "the deeply revealing nature of CSLI, its depths, breadth, and comprehensive reach, and the inescapable and automatic nature of its collection does not make it any less deserving of fourth amendment protections."¹ This opinion is reinforced by the contemporary understanding of the fourth amendment which articulates that the protections are not limited to property, and is designed to protect people from all unlawful government intrusions. The technologies used today requires a broad-minded understanding of the fourth amendment, and the common law concept of intrusion, limited solely to physical trespass, is insufficient.²

This holding accurately reflects the position of *Marbury vs. Madison* (5 U.S. 137) which specifies that "the constitution means what the Supreme Court says it means."³ When the constitution was framed, there was no ability to foresee how cellular technology could impinge upon privacy. The principle of protecting against intrusion by the government and ensuring that citizens are secure in their "persons, houses, papers, and effects must be upheld."⁴ This is further affirmed through *Riley v. California* (134 S. Ct 2473) which holds that warrantless searches of the information contained within a cell phone is not permissible.⁵ With that, it is appropriate to conclude that warrantless CSLI dissemination, intrudes upon one's reasonable expectation of privacy and since the data represents great details of a person's life, it must be protected.⁶

The Third-Party Doctrine rule is a limited interpretation of the fourth amendment as related to CSLI. Although it states that a person has a diminished expectation of privacy when information

is shared with another, the fourth amendment was not meant to disappear.”⁷ The information shared with cellular companies represent private life-patterns and since this information is required for business purposes, a customer has no ability to decline such intrusive tracking. Furthermore, cell phones are a societal staple, with 396 million accounts in the United States.⁸ A simplistic application of the third-party doctrine from *U.S. v. Miller* (96 S. Ct. 1619) is deficient. In the *Miller* case, the issue was specific to financial statements, and Miller knowingly assumed the risks in revealing personal information to his bank.⁹

Justice Kennedy states in his dissent that since CSLI records are no different than other business records, no reasonable expectation of privacy exists.¹⁰ He finds the distinction between CSLI and financial statements “illogical” and feels that the same principle should be equally applied.¹¹ The dissenting opinion further asserts that the majority opinion negates *Miller*. Consequently, the cell phone becomes a “protected medium that dangerous persons will use to commit serious crimes”.¹² Although Justice Kennedy delivers a sound rationale, the majority opinion supports the fourth amendment to the correct degree. Protecting a person’s reasonable expectation of privacy is paramount, and CSLI requires such protections based upon the sensitive nature of the information which is collected and stored.

References

¹ *Carpenter V. United States* page 20; Lexis Nexis Search Job Number 79522619; Begovich, Michael 2018

² *Ibid*, p. 3

³ LEPSL 530 Presentation 1.2 Right to Privacy, *Griswold vs. Connecticut* Part 2, 11m10s; Begovich, Michael

⁴ *Carpenter V. United States* page 2; Lexis Nexis Search Job Number 79522619; Begovich, Michael 2018

⁵ *Ibid* p. 17

⁶ Presentation 2.1 Podcast Majority Opinion; LEPSL 530; Begovich, Michael

⁷ *Ibid*

⁸ *Carpenter V. United States* page 11; Lexis Nexis Search Job Number 79522619; Begovich, Michael 2018

⁹ *Ibid* p. 14, 15; Presentation 2.1 Podcast Introduction; LEPSL 530; Begovich, Michael

¹⁰ *Ibid* p. 20

¹¹ *Ibid* p. 21

¹² *Ibid* p. 25