Mapp v. Ohio (1961)

Argued: March 29, 1961

Decided: June 19, 1961

Background

As originally written, the Bill of Rights applied only to the national government, not state and local governments. This meant that state and local government officials were able to engage in conduct that would infringe on the rights guaranteed in the first 10 amendments to the Constitution. After the Civil War, the 14th Amendment was ratified, in part, to address this infringement. The amendment’s Due Process Clause guarantees that, “No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without **due process of law**.” Over time, the Supreme Court has used the Due Process Clause to apply most Bill of Rights protections to the states through a process called **incorporation**. Because this was done over many years on a case-by-case basis and not all amendments have been applied, the process is known as **selective incorporation**.

To decide if a right should be incorporated, the Supreme Court weighs whether that right is fundamental to liberty and deeply rooted in history and tradition. During the colonial period, the British used general warrants in the American colonies that allowed them to search wherever they wanted and seize whatever they found. This angered the colonists and was among the grievances against King George III and Parliament written in the Declaration of Independence. Many historical documents and cases recognized the individual’s right to privacy in their own home.

The Fourth Amendment generally requires the police to get a **search warrant** before conducting a search of someone’s home. A search warrant is a document issued by a judge or a magistrate granting law enforcement officers permission to search a particular location to uncover evidence of a crime. An application for a search warrant must be supported by **probable cause**, that is, facts that allow a reasonable person to believe evidence will be found in that location. There are several exceptions to the search warrant requirement, such as emergency circumstances and searches of a person at the time of their arrest.

In a federal case, *Weeks v. United States* (1914), the U.S. Supreme Court created the **exclusionary rule**. The Court ruled that,if federal law enforcement officers violate someone’s Fourth Amendment rights and search their home without a warrant, any evidence obtained during the search cannot be used against them at trial. However, after *Weeks*, the exclusionary rule applied only to trials taking place in federal courts. *Mapp v. Ohio* considered whether the exclusionary rule should be incorporated against the states and require exclusion of illegally seized evidence from state trials.

Facts

In 1957, a woman named Dollree Mapp worked for an illegal gambling operation in Cleveland, Ohio. The police received an anonymous tip that Virgil Ogletree, who was wanted for questioning about a bombing, was hiding in Mapp’s home. The police went to Mapp’s home and asked for permission to enter, but she refused to let them in without a search warrant.

Several hours later, the police came back to Mapp’s house, this time with a piece of paper they claimed was a search warrant. When Mapp took the “search warrant,” the police physically fought her to get it back. It is believed the paper was not actually a warrant, a theory that was furthered by the fact that Mapp and her lawyers never saw the alleged warrant again, and the police did not produce it at her trial.

The police searched Mapp’s home extensively, including a footlocker in the basement that was too small for a man to be hiding inside. In the footlocker, the police found “lewd and lascivious” material they considered pornography. Mapp claimed the materials had been left by a former tenant. Mapp was arrested and convicted of knowingly possessing pornographic materials in violation of an Ohio state law, even though the trial court found there was no evidence that the police actually did have a search warrant.

Mapp appealed her conviction. She argued that the search violated the Fourth Amendment because the police did not have a warrant and that the illegally seized evidence should have been excluded from her trial. The state of Ohio disagreed, claiming that the exclusionary rule under the Fourth Amendment only applied to federal trials, not cases in state court for violating state law. Mapp asked the U.S. Supreme Court to hear her case, and the Court agreed.

Issue

Is evidence gained in violation of the Fourth Amendment’s prohibition on unreasonable searches and seizures admissible in state courts?

Constitutional Provisions, State Statutes, and Supreme Court Precedents

* Fourth Amendment to the U.S. Constitution

“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

* 14th Amendment, Section 1 (Due Process Clause), to the U.S. Constitution

“No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; **nor shall any State deprive any person of life, liberty, or property, without due process of law;** nor deny to any person within its jurisdiction the equal protection of the laws.”

* *Weeks v. United States* (1914)

In a unanimous decision, the U.S. Supreme Court ruled that it was unconstitutional for the police to search Freemont Weeks’ home without a search warrant. This case created the **exclusionary rule**, meaning evidence seized in violation of the Fourth Amendment could not be admitted as evidence in a federal trial.

* *Wolf v. Colorado* (1948)

In this case, Julius Wolf was convicted in a Colorado state court of conspiracy to perform an abortion. He argued that the Fourth Amendment and the Supreme Court’s decision in *Weeks v. United States* prohibited evidence seized in an unlawful search from being admitted at trial. Although the Supreme Court agreed that the search was unconstitutional, the Court ruled against Wolf and said the exclusionary rule did not extend to prosecutions in state courts.

Arguments for Mapp (petitioner)

* Since the decision in *Wolf v. Colorado*, many states passed laws that prevented the admission of evidence gained from an unlawful search or seizure during trials. Therefore, the circumstances changed enough that the Court should overturn the precedent from *Wolf*.
* The history of the Fourth Amendment shows that the right to privacy and security in one’s home is an important constitutional value. There is no reason that the right to privacy should be any less respected in a state court.
* The exclusionary rule acts to discourage the police from conducting unlawful searches and seizures. Without extending the exclusionary rule to the states, there is little to discourage police officers from violating the Fourth Amendment.

Arguments for Ohio (respondent)

* In *Wolf v. Colorado*, the Supreme Court ruled that the exclusionary rule did not apply to state courts. The Court should follow that precedent here.
* In *Wolf v. Colorado*, the Supreme Court decided that the exclusionary rule was not an essential part of the Fourth Amendment. Therefore, the exclusionary rule does not need to be expanded.
* Police can still be dissuaded from conducting unlawful searches and seizures without the exclusionary rule. There are other methods of preventing unlawful searches and seizures, such as allowing civil suits against the police.

Decision

In a 6-3 decision, the Supreme Court overturned *Wolf v. Colorado* and stated that the exclusionary rule does apply to the states.

Majority

Writing for the majority of the Court, Justice Clark examined the history of the Fourth Amendment and found that the right to privacy is a crucial element of the Constitution. Based on this, the Court concluded it is time to “close the only courtroom door remaining open to evidence secured by official lawlessness in flagrant abuse of that basic right.” He wrote that, because the right to privacy is so important, it should be protected in state courts just as much as it is in federal courts. The majority opinion concluded that the only practical way to protect Fourth Amendment rights against invasion by local police officers was to remove the incentive to seize evidence illegally. Therefore, the exclusionary rule recognized in *Weeks v. United States* was extended to the states.

Justice Clark acknowledged that the decision overturns *Wolf v. Colorado*. However, he explained that the factual circumstances surrounding the Court’s decision in *Wolf* have changed in the years since the decision. Many states, either by court decision or legislation, have since adopted rules that mirror the exclusionary rule and prohibit evidence gained during an unlawful search from being admitted at trial. Total exclusion of evidence is the only proper way to combat unlawful searches and to protect the constitutional right to privacy.

Dissent

Justice Harlan wrote that the Court should have followed the doctrine of ***stare decisis***, a Latin term that means “let the decision stand.” This meant that the Court should have upheld its prior decision in *Wolf v. Colorado*.

Impact

Following the Supreme Court’s decision, the case went back to the trial court. This time, Mapp was found not guilty of violating the Ohio statute because the state could not use the evidence seized by the police in their unlawful search. She later moved to New York and in 1971, the police once again searched her home—this time with a valid search warrant. They found $150,000 worth of heroin, along with stolen property, and she was convicted of drug possession. Mapp was sentenced to 20 years to life in prison. She asserted her innocence and believed that the police set her up due to their displeasure with the Supreme Court’s decision in *Mapp v. Ohio*. Mapp was eventually paroled in 1980, and following her release, she worked at a nonprofit organization that provided legal assistance to inmates.

The decision in *Mapp v. Ohio* continues to have a significant effect on police procedure. By extending the exclusionary rule to states, the Court provided a much stronger incentive to ensure police officers either get warrants before conducting searches or make sure they have a valid exception to needing a warrant. Later cases extended the exclusionary rule to include all evidence found as a result of an illegal search. Referred to as the “fruit of a poisonous tree” doctrine, this means that, if evidence found during an illegal search leads police to additional evidence, the additional evidence will also be excluded. Some people have criticized the *Mapp* decision, arguing that it is too protective of criminals because it may allow guilty people to avoid conviction when evidence is not properly obtained.

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| Additional information about *Mapp v. Ohio,* including background at three reading levels, opinion quotes and summaries, teaching activities, and additional resources, can be found at <https://www.landmarkcases.org/>. |

*Mapp v. Ohio* / Fourth Amendment Analysis

The Fourth Amendment to the Constitution as proposed and ratified:

A close up of text on a white background

Description automatically generated

“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrant shall issue, but upon probable cause, supported by oath or affirmation and particularly describing the place to be searched and the persons or things to be seized.”

**Source:** United States Congress (1789), Thomas Greenleaf, and James Madison Pamphlet Collection. <https://www.loc.gov/item/92838253/>.

Vocabulary

1. Define the following terms below and others you are not familiar with in your own words. You may wish to consult a legal dictionary at <https://dictionary.law.com/> or <https://www.nolo.com/dictionary>.
   1. affirmation:
   2. probable cause:
   3. searches:
   4. secure:
   5. seizures:
   6. unreasonable:
   7. violated:
   8. warrant
   9. Other words you need to define:

Observe

1. What do you notice first about this 1789 printing of the proposed Bill of Rights?
2. What do you notice first about the words in this amendment?

Reflect

1. Who is protected by the Fourth Amendment?
2. Whose actions are limited by the Fourth Amendment?
3. What rights does the Fourth Amendment guarantee in your own words?
4. Why do you think the Framers of the Bill of Rights included the Fourth Amendment?

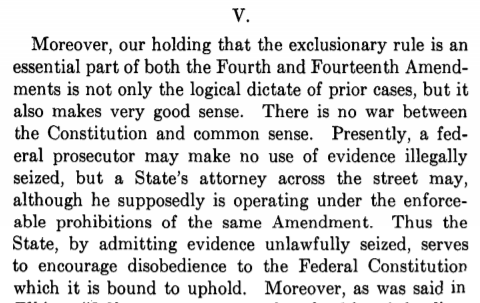
Question

1. What do you still wonder about this source?

*Mapp v. Ohio* / Opinion Analysis

Justice Clark wrote the Majority Opinion of the Court:

The **exclusionary rule**was established in *Weeks v. United States* (1914) when the Supreme Court decided evidence seized in violation of the Fourth Amendment could not be admitted as evidence in a federal trial.



**Source:** Clark, Tom Campbell Clark and Supreme Court of the United States, “U.S. Reports: Mapp v. Ohio, 367 U.S. 643. 1960,” Periodical, <https://www.loc.gov/item/usrep367643/> .

Constitutional Provisions

***Fourth Amendment to the U.S. Constitution***

“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

***14th Amendment to the U.S. Constitution, Section 1***

“… nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

Vocabulary

1. Define the following terms below and others you are not familiar with in your own words. You may wish to consult a legal dictionary at <https://dictionary.law.com/> or <https://www.nolo.com/dictionary>.
2. federal:
3. prohibitions:
4. prosecutor:
5. seized:
6. Other words you need to define:

Observe

1. What do you notice first about the words in this text?

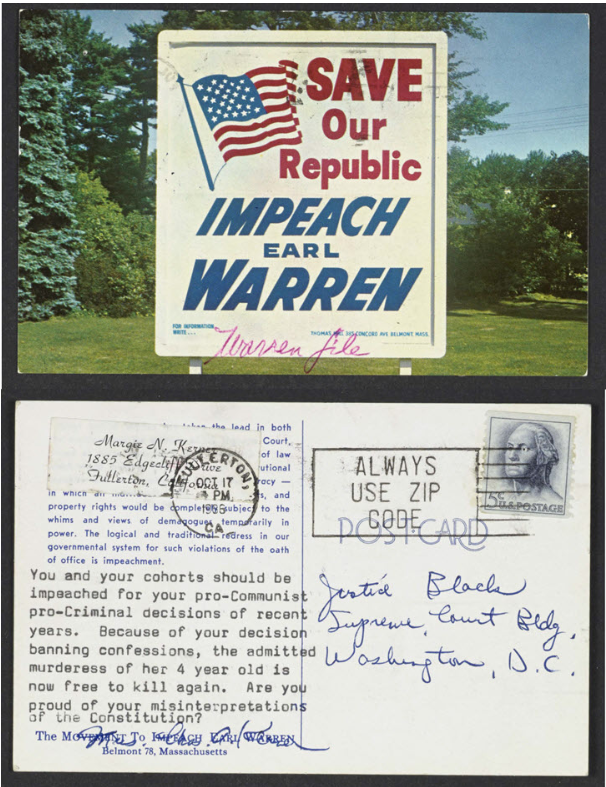
Reflect

1. Put this part of the opinion in your own words:
2. What is the purpose of this piece of the opinion?
3. Who is the primary audience for this opinion?

Question

1. What do you still wonder about this source?

*Mapp v. Ohio* / Document Analysis



“Save Our Republic: Impeach Earl Warren,” October 17, 1966, Postcard, Hugo L. Black Papers, Manuscript Division, Library of Congress, <https://www.loc.gov/law/help/digitized-books/miranda-v-arizona/miranda-documents.php>.

Background

Earl Warren was the Republican governor of California. He was nominated by President Dwight D. Eisenhower (also a Republican) to be Chief Justice of the United States. In 1954, he was confirmed by the Senate. President Eisenhower expected Chief Justice Warren to make conservative decisions; however, in his first term on the Supreme Court he wrote the unanimous opinion in *Brown v. Board of Education of Topeka, Kansas,* which desegratated public schools. By the mid-1960s the Warren Court made many decisions to protect the rights of the accused including *Mapp v. Ohio* (1961), which extended the exclusionary rule to states; *Gideon v. Wainwright* (1963), which required states to provide attorneys for poor defendants; and *Miranda v. Arizona* (1966), which required police to inform people in custody of their right to stay silent in order to not incriminate themselves and their right to have an attorney provided.

An “Impeach Earl Warren” movement was started by people who opposed the Warren Court’s decisions. However, as stated in Article III of the U.S. Constitution, justices “*shall hold their Offices during good Behaviour*” meaning they have life terms. Article II states that civil officers, including justices, may only be impeached for “*Treason, Bribery, or other high Crimes and Misdemeanors*.”

Observe

What do you notice first about the front of the postcard?

What do you notice first about the back of the postcard?

Reflect

Why do you think someone sent this postcard?

What can you tell about the point of view of the person who sent the postcard?

What do you learn about the reaction of some people to the decision in *Mapp v. Ohio* (1961) and others that protected the rights of the accused from this postcard?

Do you think everyone had this reaction to the decisions?

Article III of the U.S. Constitution states this about the life terms of Supreme Court justices: “The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour.” Article II states that public officers such as justices “shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.” Considering these two constitutional provisions, do you think Chief Justice Earl Warren could be impeached?

Question

What do you still wonder about?

***Mapp v. Ohio* / Inquiry-based Task: What’s Your Opinion?**

Before you begin:

* [Read *Mapp v. Ohio* case summary](http://landmarkcases.org/assets/site_18/files/mapp_v_ohio/student/case_summary_hs_mapp_student.pdf)
* [Complete Fourth Amendment Analysis (Activity 1)](http://landmarkcases.org/assets/site_18/files/mapp_v_ohio/student/activity_4th_amendment_analysis_mapp_student.pdf)
* [Complete Opinion Analysis (Activity 2)](http://landmarkcases.org/assets/site_18/files/mapp_v_ohio/student/activity_opinion_analysis_mapp_student.pdf)
* [Complete Document Analysis (Activity 3)](http://landmarkcases.org/assets/site_18/files/mapp_v_ohio/student/activity_document_analysis_mapp_student.pdf)

Background:

After cases are accepted by the Supreme Court, attorneys, often called advocates, file written briefs that explain their legal reasoning and present their side of the case in oral arguments. During oral arguments, each advocate has 30 minutes to outline their case and answer questions from the justices.

On the Friday after the justices have heard oral arguments in a case, they meet in conference to vote on the outcome. The side with the most votes will write the opinion of the Court or the majority opinion. The side with the least votes will write the dissenting opinion, which outlines the reasons those justices disagree with the decision. The actual writing of these opinions will be assigned to a justice by the chief justice or the most senior justice on each side. These opinions are then circulated to the other justices who will “sign on” to the opinions. Sometimes justices change sides during this process or decide to write their own concurring opinion, which agrees with the outcome of the case but states a different legal reasoning.

Your task:

As a Supreme Court justice, you will hear the arguments in *Carpenter v. United States,* a case about the location data generated by cell phones and whether it is an unreasonable search for the government to collect that data.

Directions:

1. Read the *Carpenter v. United States* (2018) **case summary** (page 2).
2. Complete the **What’s Your Opinion** activity (page 7).

Carpenter v. United States (2018)

**Argued**: November 29, 2017

**Decided:** June 22, 2018

Background

The Fourth Amendment protects “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures[.]” The Fourth Amendment prohibits searches and seizures that are unreasonable. A search occurs when the government looks through someone’s property or belongings, as long as that person had a reasonable expectation of privacy.

“The government” could be any agent or officer of the federal, state, or local governments. “A reasonable expectation of privacy” is a legal term. It means that 1) the person whose belongings are being searched expected those belongings to be private, and 2) society recognizes that expectation as being reasonable.

The second part of the Fourth Amendment is about warrants: “…no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

A warrant is a legal document that authorizes a search. Probable causeis an officer’s reasonable belief, supported by personal knowledge or reliable sources, that a crime has been committed and items connected to the crime are likely to be found in a certain place. A search authorized by a warrant is considered a “reasonable” search.

This is a case about the location data generated by cell phones and whether it is an unreasonable search for the government to collect that data.

Cell phones work by establishing radio connections with nearby cell towers. Phones are constantly searching for the strongest signal from nearby towers. Whenever someone’s cell phone establishes a connection with a tower, the wireless company can log certain details about that connection. These details might include the date, time, and length of each call; the phone numbers engaged in the call; and the location of the cell towers the phone was connected to when the call began and ended. This information can give some clues to where a phone was located on certain days and times. Law enforcement officials sometimes find it helpful to use this information from the wireless companies to help confirm whether a suspect was in a certain area at a specific time.

Facts

The FBI suspected that Timothy Carpenter was participating in armed robberies, and agents wanted to review data about the location of Carpenter’s cell phone. A federal law, the Stored Communications Act*,* allows law enforcement officers to request an order from a judge that requires a telecommunications company to turn over such records. To get that order (which is not a warrant), the officers must show the judge that the records they want are relevant to an active criminal investigation. “Relevant to a criminal investigation” is a lower standard than “probable cause,” which must indicate that a crime has been committed and the information being sought is connected to the crime.

The FBI showed a judge that the records they wanted were related to a criminal investigation, and they received records about Carpenter’s cell phone from his wireless phone company. The records included information about which cell phone towers Carpenter’s phone sent signals to at the beginning and end of each call he made or received over a 127-day period.

The government used the location data at Carpenter’s trial to show that Carpenter used his cell phone within a mile or two of several robberies around the time the robberies occurred. The trial also included testimony from several accomplices who said that Carpenter organized most of the robberies. Carpenter was convicted of nine armed robberies.

Carpenter appealed that ruling, arguing that the prosecution should not have been allowed to present the cellphone location data at his trial. He said that the government’s collection of that information was an unconstitutional search under the Fourth Amendment. Such records, he argued, should only be seized with a warrant, supported by probable cause.

The U.S. Court of Appeals for the Sixth Circuit ruled that the government’s collection of cell-site records was not legally a search, because Carpenter did not have a reasonable expectation that the location data from his cell phone was private. If it is not a search, the government did not need a warrant.

Issue

Did the government need to get a warrant before gathering location data about Carpenter’s cell phone from his wireless company?

Constitutional Amendment, Statute, and Supreme Court Precedents

* Fourth Amendment to the U.S. Constitution

“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

* **Stored Communications Act****(1986)**
* The Stored Communications Act authorizes a judge to issue an order to a telecommunications company to hand over user records to the government. The government must “offer specific and articulable facts showing that there are reasonable grounds to believe” that the records sought “are relevant and material to an ongoing criminal investigation.”
* *Mapp v. Ohio (1961)*
* This case extended the exclusionary rule, as created by *Weeks v. United States,* to cases arising in state courts. The Court decided that the right to privacy is a crucial element of the Constitution and the Fourth Amendment, and that the Mapp decision was necessary to “close the only courtroom door remaining open to evidence secured by official lawlessness in flagrant abuse of that basic right.”
* ***Smith v. Maryland* (1979)**
* The Supreme Court ruled that the police’s installation of a device that tracked the phone numbers a person dialed from his home phone was not a search because the caller could not reasonably expect those numbers, which he had disclosed to his phone company, to remain private. The Court reasoned that it had “consistently . . . held that a person has no legitimate expectation of privacy in information he voluntarily turns over to third parties.” The Court relied on a prior case that had held that the government does not conduct a search by obtaining an individual’s bank records from his bank. The Court also noted that the device “did not acquire the contents of communications” and that it was not installed in Smith’s home, so the police had not entered his home without authorization.
* ***United States v. Jones* (2012)**
* The Supreme Court ruled that the installation of a GPS tracking device on someone’s vehicle, without a warrant, is an unlawful search under the Fourth Amendment. The Court said that the GPS tracking in this case was unconstitutional because the government had trespassed onto Jones’ personal property to install the device. Although the majority opinion did not say so, five justices agreed, through concurring opinions, that such long-term GPS monitoring (the police had monitored Jones’s location for more than a month) also violates someone’s reasonable expectation of privacy.
* ***Riley v. California* (2014)**
* The Supreme Court decided that a warrantless search of data on an arrestee’s cell phone is generally unconstitutional. The justices said that police officers should get a warrant if they want to search through someone’s cell phone when they are arrested (unless it is an emergency). The Court said that people have strong privacy interests in their phones, which can store more personal information than a person in the past would have ever been able to carry on them.

Arguments for Carpenter (petitioner)

* The government should have gotten a warrant before collecting Carpenter’s cellphone location data. It was a search, because Carpenter reasonably expected that the government would not pry into records that could document his movements, locations, and activities over a period of months. Most people would agree that such data should be private.
* It is almost impossible to live in today’s society without using a cellphone. Most people carry phones with them everywhere they go. Cell phone location records can show where someone was, and when, and who they were with, at virtually all times.
* The government argues that, since the data was produced by the cell phone company, Carpenter did not have a reasonable expectation that it would be private. But the cases the government relies on were decided before the advent of the digital age. Today, it is hard to function in society without sharing information with third parties. Just because another person or company has access to or control over private records, it should not mean that they are no longer considered private.
* This case is like *United States v. Jones* because the government is gathering sensitive location data, without a warrant, over a long period of time.
* This case is not like *Smith v. Maryland,* because the information the government gathered is so much more detailed and sensitive than when just phone numbers were dialed. Also, cell phone users are likely not even aware that their wireless companies store—and can give to the government—such intensive information about the location of their phones.
* There are other ways companies track people’s digital information too—for example, internet service providers maintain copies of lots of information about websites their customers visit, and search engines record logs of individuals’ searches. This information reveals a lot about innocent people’s lives. If the government can obtain cellphone location data without a warrant, what would prevent it from gathering this sort of information about everyday Americans?

Arguments for the United States (respondent)

* The government did not need a warrant to gather the cellphone location data. People have no reasonable expectation of privacy in information they freely give to a third party like a cell phone company. This case is a lot like *Smith v. Maryland* and the bank records case.
* The government would have needed a warrant to record the words spoken in Carpenter’s phone calls because the content of someone’s communications is private. But cell phone location data is more like an address on an envelope or the phone numbers they dialed; it is information that gets the message from point A to point B. Those records say nothing about the content of any calls.
* This case is different from *Unites States v. Jones* where the government secretly attached a GPS tracking device to someone’s car. In *Jones* the government itself conducted surveillance—which constituted a search—rather than merely acquiring a third party’s business records. And GPS tracking is different from cell-site location information because it is very precise and can locate a person within about 50 feet. The data the government obtained here is far less precise, as it can only suggest a person’s location within a number of miles. Also, the government did not have to trespass or invade Carpenter’s personal property to get this information.
* This case is different from *Riley v. California*. There, everyone agreed that a search had occurred, and the only question was whether an exception to the warrant requirement for searches occurring during arrests should apply. The question in this case is whether a search occurred in the first place, given that Carpenter voluntarily conveyed information about the location of his phone to his cell phone provider.
* Any cellphone user should know that their phone “exposes” its location to their cell phone provider. Users also know that the phone companies record this information for a variety of legitimate business purposes.
* The American people have expressed their expectation of privacy with regard to digital information through their Congressional representatives who passed the Stored Communications Act. That law stakes out a middle ground between full Fourth Amendment protection and no protection at all, requiring that the government show “reasonable grounds” but not “probable cause” to obtain the cell-site data at issue here.

What’s Your Opinion?

* After you understand the decision and impact of *Mapp v. Ohio,* read the excerpts below from the opinions[[1]](#footnote-1) for *Carpenter v. United States* (2018). These cases are both about a government search and whether it is unreasonable. You will apply the precedent in *Mapp v. Ohio* and choose the opinion that best reflects your opinion in this case.
* As you read, **underline** the ideas you agree with and **~~strike through~~** those with which you disagree. When you are finished reading, review the underlined ideas and **circle** the ones you feel are the strongest arguments. You should choose the opinion with the most circled ideas. Answer the **Questions to Consider** (page 8).
* **Opinion A**

This case presents the question whether the Government conducts a search under the Fourth Amendment when it accesses historical cell phone records that provide a comprehensive chronicle of the user’s past movements.

As Justice Brandeis explained in his famous dissent, the Court is obligated—as “[s]ubtler and more far-reaching means of invading privacy have become available to the Government”—to ensure that the “progress of science” does not erode Fourth Amendment protections. Here the progress of science has afforded law enforcement a powerful new tool to carry out its important responsibilities. At the same time, this tool risks Government encroachment of the sort the Framers, “after consulting the lessons of history,” drafted the Fourth Amendment to prevent.

We decline to grant the state unrestricted access to a wireless carrier’s database of physical location information. In light of the deeply revealing nature of CSLI [cell-site location information], its depth, breadth, and comprehensive reach, and the inescapable and automatic nature of its collection, the fact that such information is gathered by a third party does not make it any less deserving of Fourth Amendment protection. The Government’s acquisition of the cell-site records here was a search under that Amendment.

* **Opinion B**

The concept of reasonable expectations of privacy … sought to look beyond the “arcane distinctions developed in property and tort law” in evaluating whether a person has a sufficient connection to the thing or place searched to assert Fourth Amendment interests in it. First…individuals often have greater expectations of privacy in things and places that belong to them, not to others. And second, the Fourth Amendment’s protections must remain tethered to the text of that Amendment, which, again, protects only a person’s own “persons, houses, papers, and effects.”

Cell-site records, however, are no different from the many other kinds of business records the Government has a lawful right to obtain... Customers like petitioner [Carpenter] do not own, possess, control, or use the records, and for that reason have no reasonable expectation that they cannot be disclosed...

This case should be resolved by interpreting accepted property principles as the baseline for reasonable expectations of privacy. Here the Government did not search anything over which Carpenter could assert ownership or control. Instead, it issued a court-authorized subpoena to a third party to disclose information it alone owned and controlled. That should suffice to resolve this case.

**Questions to Consider**

1. How is the precedent *Mapp v. Ohio* (1961) similar to *Carpenter v. United States* (2018)?
2. How is the precedent *Mapp v. Ohio* (1961) different from *Carpenter v. Unites States* (2018)?
3. As a Supreme Court justice, consider the above questions and review the ideas you circled. Decide which opinion would you sign on to (agree with)? State your reasoning for choosing this opinion by incorporating the ideas you circled in the opinion. If you do not agree with either opinion you may write your own concurring opinion.
4. **Optional extension question:** After you learn which opinion was the majority and which was the dissenting opinion, does the Supreme Court’s decision surprise you? Why or why not?

1. *Carpenter v. United States,* 585 US \_ (2018). [↑](#footnote-ref-1)