



When it comes to your cell phone, what does your right to privacy include?

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If you are one of the more than 90% of American adults who own a cell phone, consider for a moment what your device contains. Millions of lines of text? Hundreds of personal photographs? Your internet search history? Confidential or proprietary documents attached to your work emails? Even more in salvageable deleted files or the cloud? Finally, ask yourself, would you like to hand all of this information over to the government?

The Fourth Amendment is the part of the Bill of Rights that prohibits unreasonable searches and seizures, and requires any warrant to be judicially sanctioned and supported by probable cause. As such, a law enforcement officer cannot walk into your home or place of business and conduct a search on your computer, or look through your phone records, without a warrant. The United States Supreme Court has held, however, that a warrantless search may be reasonable if it falls within one of a few specific exceptions. One of those exceptions is when a warrantless search is conducted incident to a lawful arrest.

The United States Supreme Court was recently called upon to consider the case of Mr. Riley, who was stopped by the police for a traffic violation. This traffic stop led to an arrest, which led to a search of Mr. Riley's person without a warrant. At the time, Mr. Riley was carrying his cell phone in his pocket. The police officer seized Mr. Riley's phone and, over the next few hours, the phone was searched. Based in part on information discovered in the phone, Mr. Riley was charged and convicted of a serious crime.

In a ruling applauded by privacy experts, the United States Supreme Court reversed Mr. Riley's conviction. In *Riley v. California*, the Court ruled that the police generally may not, without a warrant, search digital information on a cell phone seized from an individual who has been arrested. The unanimous Court noted that "[c]ell phones differ in both a quantitative and qualitative sense from other objects that might be carried on an arrestee's person... Before cell phones, a search of a person was limited by physical realities and generally constituted a narrow intrusion on privacy."

Following *Riley*, it appears United States citizens have a reasonable expectation of privacy with regard to what is put into their cell phones. But what about what comes out of them? The Rhode Island Supreme Court recently made a distinction in the case of *State v. Patino*. Certain text messages at issue in that case, from Mr. Patino, were accessed by police from his girlfriend's phone. The Court opined that a sender of a text message relinquishes control over what becomes of that message on the recipient's phone. As such, the Court determined that the defendant did not have any reasonable expectation of privacy in his girlfriend's phone.

It is unlikely that the Founding Fathers could have anticipated the substantially greater individual privacy concerns implicated by mobile devices containing massive amounts of digital information. It is safe to predict that the battle between governmental interests and privacy concerns will continue well into the future, as technology continues to advance and evolve.

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