

During August 2016, smoke hung over the entirety of western Montana. Amidst the nearly hazardous conditions, a crowd gathered for the annual Saturday evening rodeo, one of the largest community events held annually. The rodeo itself is a study of demographics and culture; as such, most of the audience is comprised of adults. Their children, meanwhile, congregate underneath the bright lights of the nearby carnival. At precisely 10:00 p.m, after the last bull was locked in his pen, rodeo watchers flocked towards their vehicles. It was at this fateful moment that I was first introduced to the potentially dangerous side of modern smart devices. My parents were among the rodeo crowd, and I was stuck in the carnival. With options dwindling, I opened an app on my iPhone. Immediately, I located my father's GPS signal from his device. I walked towards his location on the virtual map, eventually finding both my parents. It was during this stressful time that the way in which personal privacy has been exchanged for convenience became astoundingly clear. Prior to the digital age, much of this privacy was protected under the Fourth Amendment, designed to prohibit "illegal search and seizure" of property and documents (which includes data footprints such as a smartphone GPS signal). Now, with the proliferation of an increasingly connected society, continuous evolution of the justice system is needed to keep pace with new technological advances. Since the Fourth Amendment was authored, its authority has been repeatedly challenged through the rulings of the Supreme Court.

One of those challenges would present itself at a vastly different time in American history, a period in which being lost would drive a reasonable person to a pay phone, rather than an app on a smart device. The year was 1965, and for the clients of basketball handicapper Charles Katz<sup>1</sup>, it was not the notion of being lost, but rather losing, that would lead them to pick up a call every morning from Los Angeles. The very nature of Katz's actions was illegal, transmitting wager information in direct

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<sup>1</sup> Schneider, Harvey A. "Katz v. United States: The Untold Story." *McGeorge Law Review* 40.1 (2008).

violation of 18 U.S.C. § 1084<sup>2</sup>. Soon, through a combination of hubris and surprisingly knowledgeable bets, the FBI uncovered the illicit gambling activities. In an attempt to catch Katz red-handed, the government attached an eavesdropping device to a telephone booth used in his scheme<sup>3</sup>. With the proof acquired, the FBI arrested Katz in 1967. As a defendant, the government's case looked almost impossible to dispute: the phone records painted a picture of a "consummate gambler," and a firm precedent had already been established in the case of *Olmstead v. United States* (1928), which upheld the legitimacy of wiretapping by law enforcement<sup>4</sup>. Katz sought to reverse the precedent, arguing that his right to privacy under the Fourth Amendment was violated by the wiretap, regardless of the crime exposed. In a 7-1 majority opinion<sup>5</sup>, the court sided with the defendant, stating that "what [Katz] sought to exclude when he entered the booth was not the intruding eye—it was the uninvited ear. He did not shed his right to do so simply because he made his calls from a place where he might be seen." Katz's final gamble paid off and changed the paradigm of the Fourth Amendment. Now, in the digital revolution, the boundaries of privacy will only continue to become more opaque in an increasingly connected society.

By 2018, those boundaries would again be tested, in the saga of Timothy Carpenter and his band of Radioshack robbers<sup>6</sup>. Just as in the *Katz* case, reasonable suspicion and seemingly irrefutable proof would be pitted against the boundaries of constitutional privacy. By the end of the 2000s, cell phone towers across the country were equipped to receive CLSI (cell site location information)<sup>7</sup> reports. By April 2011, when a posse of armed intruders was caught with laundry bags filled with new smartphones<sup>8</sup>, law enforcement began to pressure the suspects to divulge information that might

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<sup>2</sup> *Katz v. United States*." Oyez, 17 Feb. 2019, [www.oyez.org/cases/1967/35](http://www.oyez.org/cases/1967/35).

<sup>3</sup> Iannacci, Nicandro. "Katz v. United States: The Fourth Amendment Adapts to New Technology." *National Constitution Center – Constitutioncenter.org*, National Constitution Center, 18 Dec. 2018.

<sup>4</sup> "Olmstead v. United States." Oyez, 17 Feb. 2019, [www.oyez.org/cases/1900-1940/277us438](http://www.oyez.org/cases/1900-1940/277us438).

<sup>5</sup> Stewart, Potter, and Supreme Court Of The United States. *U.S. Reports: Katz v. United States*, 389 U.S. 347. 1967. Periodical. Retrieved from the Library of Congress.

<sup>6</sup> "Carpenter v. United States." Oyez, 20 Feb. 2019, [www.oyez.org/cases/2017/16-402](http://www.oyez.org/cases/2017/16-402).

<sup>7</sup> "Cell Phone Location Tracking," *NACDL Surveillance Self-Defense Primer*, June 7, 2016.

<sup>8</sup> Matsakis, Louise. "The Supreme Court Just Greatly Strengthened Digital Privacy." *Wired*, Conde Nast, 22 June 2018.

expose other complicit parties in the scheme. Eventually, one suspect turned over his smartphone. Armed with a court order, agents immediately cross-referenced cell phone numbers dialed from the suspect's phone with GPS data, looking for shared locations during the period of the armed robberies. The smartphone of Timothy Carpenter fit the profile of a guilty man. Two courts would initially concur, sentencing Carpenter to 116.5 years<sup>9</sup> for armed robbery. He appealed the ruling, alleging that the warrantless search of cell phone location records by the FBI violated the assured privacy under the Fourth Amendment. In a stunning verdict, the Supreme Court robbed the FBI of their airtight case and overturned the conviction, writing that "when the Government accessed CSLI from the wireless carriers, it invaded Carpenter's reasonable expectation of privacy in the whole of his physical movements<sup>10</sup>." In doing so, the court affirmed the expectation of privacy in the case of location data and ensured the Fourth Amendment's continuing preservation of privacy in a new digital age.

The privacy issues facing the American legal system will only continue to multiply amidst an increasingly connected society. With the constant advancement of technology, consumers will be tasked with navigating an increasingly public world: where confidentiality can easily be traded for convenience and marketplace rewards. This also complicates the interpretation of the Fourth Amendment: as technology has grown more efficient and encompassing, its authority has repeatedly been challenged in the Supreme Court. Through the subsequent rulings of the court, it has become resoundingly clear that if law enforcement practices do not evolve alongside this digital innovation, convictions will continue to be overturned, as seen in the 2017 *Carpenter* case. With citizens increasingly trusting digital devices in their most intimate private spaces, the potential for their exploitation by both government authorities and corporate entities will continue to increase. Even though a loss of privacy was a gift at the rodeo, is it a curse today? In answering that question, the Supreme Court will undoubtedly write a new chapter in the ongoing story of the Fourth Amendment.

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<sup>9</sup> *US v. Carpenter*, 819 F.3d 880 (6th Cir. 2016).

<sup>10</sup> *Carpenter v. US*, 138 S. Ct. 2206, 585 U.S., 201 L. Ed. 2d 507 (2018).

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