



In today's ruling described by The New York Times as "a sweeping victory for privacy rights in the digital age," the Supreme Court in *Riley v. California* unanimously held that police may not search digital information on a cell phone seized from an individual who has been arrested without a warrant. (See my previous blog post here for more information.) Or stated another way, as Chief Justice Roberts did in his 9-0 majority opinion: "These cases require us to decide how the search incident to arrest doctrine applies to modern cell phones, which are now such a pervasive and insistent part of daily life that the proverbial visitor from Mars might conclude they were an important feature of human anatomy."

Here's the legal backdrop for the Court's opinion in *Riley*, as set forth in an excellent and plain English analysis on SCOTUSblog:

"In 1973, the Supreme Court held that police officers did not need a warrant to look inside a pack of cigarettes that they found in the coat pocket of a man who had been arrested. Those kinds of warrantless searches were allowed, the Court reasoned back then, to protect police officers and to prevent the destruction of evidence. Forty years later, California and the federal government urged the Supreme Court to adopt the same rule for cell phones. Once someone is arrested, they contended, police should be able to go through the entire contents of his phone without a warrant because cell phones are just like any other item that you can carry in your hand or pocket."

In *Riley*, Chief Justice Roberts first rejected the government's arguments that a search of an arrestees' cell phone without a warrant was necessary to protect the police officers making the arrest and to prevent evidence contained on the cell phone from being destroyed. He then focused on the extent to which searching the cell phone of someone who has been arrested will intrude on his privacy. Chief Justice Roberts recognized that cell phones are now "cameras, video players, rolodexes, calendars, tape recorders, libraries, diaries, albums, televisions, maps, or newspapers" – and emphasized their "immense storage capacity":

"Before cell phones, a search of a person was limited by physical realities and tended as a general matter to constitute only a narrow intrusion on privacy. Most people cannot lug around every piece of mail they have received for the past several months, every picture they have taken, or every book or article they have read—nor would they have any reason to attempt to do so. ... But the possible intrusion on privacy is not physically limited in the same way when it comes to cell phones. The current top-selling smart phone has a standard capacity of 16 gigabytes (and is available with up to 64 gigabytes). Sixteen gigabytes translates to millions of pages of text, thousands of pictures, or hundreds of videos."

Because of the different kinds of data that can be stored on a cell phone, Chief Justice Roberts also posited that searching a cell phone could provide police with even more information about your life than they could get from searching your home. Significantly, one of the driving forces behind the American Revolution, Chief Justice Roberts wrote, was revulsion against "general warrants," which "allowed British officers to rummage through homes in an unrestrained search for evidence of criminal activity." The Chief Justice said: "The fact that technology now allows an individual to carry such information in his hand does not make the information any less worthy of the protection for which the founders fought."

Chief Justice Roberts acknowledged that today's decision would make it a bit more difficult for police officers to do their jobs: "Privacy comes at a cost," he said. But he also emphasized that the Court's decision does not mean that police can never search a cellphone that they take from someone who is arrested. Instead, in the absence of an emergency, they generally have to get a warrant to do so – a process that, Justice Roberts pointed out, is easier than ever before because the police, using email and iPads, can sometimes have a warrant in hand in 15 minutes.



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