



F25 Emerging Trends in Electronic Surveillance

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Learning Overview: The purpose of this presentation is to educate attendees regarding emerging and restrictive trends in electronic surveillance search and seizure law.

Impact on the Forensic Science Community: This presentation will impact the forensic science community by showing the limitations of personal expectations of privacy in public places as it relates to the usage of electronic devices or personal movements.

This presentation will inform attendees about recent trends in electronic surveillance law and restrictive trends in case law from the United States Supreme Court. This presentation will provide insight into the Court's interpretation of an individual's expectation of privacy in public locations and discuss long-standing techniques employed by law enforcement that are limited by the Court's holdings. These investigative techniques will include discussions of the usage of historical cell site location information and toll records, together with such investigative devices as pen registers and trap and trace devices.

On June 22, 2018, the United State Supreme Court handed down its opinion in *Carpenter v. United States*.¹ In *Carpenter*, the Court extended the protections of the Fourth Amendment to cell site location information in the possession of wireless service providers, requiring a search warrant issued upon a finding of probable cause for law enforcement to access such information. Prior to *Carpenter*, the United States Supreme Court handed down its opinion in *United States v. Jones*. In *Jones*, the Court likewise extended the protections of the Fourth Amendment to law enforcement's installation and use of mobile tracking devices by holding that such investigative techniques constitute a search. Together, these cases recognize increasingly greater expectations of privacy in public places than have been historically recognized by the Court.

Historically, information held in the possession of businesses, such as electronic service providers, excluding the content of communications, has not been protected by the Fourth Amendment's warrant requirement. Indicative of this is that federal statutory provisions, as well as the statutes of most states, do not require a search warrant to access most information. This presentation will analyze the shift in historical perspective that contributed to the privacy interests recognized in *Carpenter* and *Jones*.

While statutory authority may exist in state and federal jurisdictions allowing law enforcement to access electronic customer data on standards lower than required by *Carpenter* and *Jones*, the Court has severely limited law enforcement's access to certain types of information by requiring judicial approval on a finding of probable cause. This presentation will provide insight into those differences.

After attending this presentation, attendees will have a greater understanding of electronic surveillance tools in use by law enforcement and how those tools benefit investigations. Attendees will also have a greater understanding of emerging trends in courts providing increasingly greater protections to an individual's expectation of privacy in certain information, including the nature and extent of judicial process required for law enforcement to access such information.

Reference(s):

1. *Carpenter v. United States*, 585 U.S. ____ (2018).
2. *United States v. Jones*, 565 U.S. 400 (2012).

Privacy, Searches, Electronic Surveillance