

United States



Privacy Is Portable The court takes a broad view on cyber-rights

BY MASSIMO CALABRESI

THE QUESTION BEFORE THE Supreme Court was narrow: Can law-enforcement officers search cell phones without a warrant after an arrest, as they are allowed to do with address books and wallets? The ruling, however, was anything but. In a landmark decision issued June 25, a unanimous court clarified long-standing questions about constitutional protections in the computer age and potentially shifted the debate over cyber-rights in modern society.

On the matter of the cell-phone searches, Chief Justice John Roberts concluded that, barring an extraordinary circumstance like child abduction or a ticking time bomb, the Fourth Amendment's guarantee against unreasonable searches required cops to get a warrant before

examining a cell phone after an arrest. But the normally restrained Roberts went much further, writing that when it comes to privacy, the difference between a wallet and a cell phone is as great as that between "a ride on horseback" and "a flight to the moon." The mini-computers we carry in our pockets can collect in one place "the sum of an individual's private life," Roberts wrote, and Americans now have a greater expectation of privacy in that sum total than in any individual part. The fact that new technology makes private life portable renders it no "less worthy of the protection for which the Founders fought."

Supreme Court watchers called the opinion stunning and revolutionary. By "invoking the vision of

the founders of the country to maintain private space in the digital age," says Tom Goldstein, a prominent Supreme Court lawyer, the Justices "embraced without limits a strong vision of digital privacy."

That vision has the potential to resonate beyond criminal law. In the near term, lower courts are considering whether mass data collection by the National Security Agency violates privacy protections; those who argue it does were heartened by the cell-phone ruling. And while the court's opinion addresses only the Fourth Amendment, which applies to government searches, it sets the tone for coming fights over commercial and workplace privacy. As Steven Shapiro of the American Civil Liberties Union put it, the court's sweeping statement has the potential to change "the public-policy debate about corporate intrusions into our lives."