

CHAPTER 5

THE FOURTH AMENDMENT

UNITED STATES v. JONES

Certiorari to the United States Court of Appeals for the D.C. Circuit 565 U.S. 400 (2012)

JUSTICE SCALIA delivered the opinion of the Court.

We decide whether the attachment of a Global-Positioning-System (GPS) tracking device to an individual's vehicle, and subsequent use of that device to monitor the vehicle's movements on public streets, constitutes a search or seizure within the meaning of the Fourth Amendment.

I

In 2004 respondent Antoine Jones, owner and operator of a nightclub in the District of Columbia, came under suspicion of trafficking in narcotics and was made the target of an investigation by a joint FBI and Metropolitan Police Department task force. Officers employed various investigative techniques, including visual surveillance of the nightclub, installation of a camera focused on the front door of the club, and a pen register and wiretap covering Jones's cellular phone.

Based in part on information gathered from these sources, in 2005 the Government applied to the United States District Court for the District of Columbia for a warrant authorizing the use of an electronic tracking device on the Jeep Grand Cherokee registered to Jones's wife. A warrant issued, authorizing installation of the device in the District of Columbia and within 10 days.

On the 11th day, and not in the District of Columbia but in Maryland,¹ agents installed a GPS tracking device on the undercarriage of the Jeep while it was parked in a public parking lot. Over the next 28 days, the Government used the device to track the vehicle's movements, and once had to replace the device's battery when the vehicle was parked in a different public lot in Maryland. By means of signals from multiple satellites, the device established the vehicle's location within 50 to 100 feet, and communicated that location by cellular phone to a Government computer. It relayed more than 2,000 pages of data over the 4-week period.

The Government ultimately obtained a multiple-count indictment charging Jones . . . with . . . conspiracy to distribute and possess with intent to distribute five kilograms or more of cocaine and 50 grams or more of cocaine base. . . . Before trial, Jones filed a motion to suppress evidence obtained through the GPS device. The District Court granted the motion only in part. . . . Jones's trial in October 2006 produced a hung jury on the conspiracy count.

In March 2007, a grand jury returned another indictment, charging Jones and others with the same conspiracy. The Government introduced at trial the same GPS-derived locational data admitted in the first trial, which connected Jones to the

alleged conspirators' stash house that contained \$850,000 in cash, 97 kilograms of cocaine, and 1 kilogram of cocaine base. The jury returned a guilty verdict, and the District Court sentenced Jones to life imprisonment.

The United States Court of Appeals for the District of Columbia Circuit reversed the conviction because of admission of the evidence obtained by warrantless use of the GPS device which, it said, violated the Fourth Amendment. . . . We granted certiorari.

A

The Fourth Amendment provides in relevant part that “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated.” It is beyond dispute that a vehicle is an “effect” as that term is used in the Amendment. We hold that the Government’s installation of a GPS device on a target’s vehicle,² and its use of that device to monitor the vehicle’s movements, constitutes a “search.”

It is important to be clear about what occurred in this case: The Government physically occupied private property for the purpose of obtaining information. We have no doubt that such a physical intrusion would have been considered a “search” within the meaning of the Fourth Amendment when it was adopted. *Entick v. Carrington*, 95 Eng. Rep. 807 (C.P. 1765), is a “case we have described as a ‘monument of English freedom’ ‘undoubtedly familiar’ to ‘every American statesman’ at the time the Constitution was adopted, and considered to be ‘the true and ultimate expression of constitutional law’” with regard to search and seizure. *Brower v. County of Inyo*, 489 U.S. 593, 596 (1989) (quoting *Boyd v. United States*, 116 U.S. 616, 626 (1886)). In that case, Lord Camden expressed in plain terms the significance of property rights in search-and-seizure analysis:

“[O]ur law holds the property of every man so sacred, that no man can set his foot upon his neighbour’s close without his leave; if he does he is a trespasser, though he does no damage at all; if he will tread upon his neighbour’s ground, he must justify it by law.” *Entick*, *supra*, at 817.

The text of the Fourth Amendment reflects its close connection to property, since otherwise it would have referred simply to “the right of the people to be secure against unreasonable searches and seizures”; the phrase “in their persons, houses, papers, and effects” would have been superfluous.

Consistent with this understanding, our Fourth Amendment jurisprudence was tied to common-law trespass, at least until the latter half of the 20th century. . . .

Our later cases, of course, have deviated from that exclusively property-based approach. In *Katz v. United States*, 389 U.S. 347, 351 (1967), we said that “the Fourth Amendment protects people, not places,” and found a violation in attachment of an eavesdropping device to a public telephone booth. Our later cases have applied the analysis of Justice Harlan’s concurrence in that case, which said that a violation

occurs when government officers violate a person’s “reasonable expectation of privacy,” *id.*, at 360.

The Government contends that the Harlan standard shows that no search occurred here, since Jones had no “reasonable expectation of privacy” in the area of the Jeep accessed by Government agents (its underbody) and in the locations of the Jeep on the public roads, which were visible to all. But we need not address the Government’s contentions, because Jones’s Fourth Amendment rights do not rise or fall with the *Katz* formulation. At bottom, we must “assur[e] preservation of that degree of privacy against

government that existed when the Fourth Amendment was adopted. [*Kyllo v. United States*, 533 U.S. 27, 34 (2001).] As explained, for most of our history the Fourth Amendment was understood to embody a particular concern for government trespass upon the areas (“persons, houses, papers, and effects”) it enumerates.³ *Katz* did not repudiate that understanding. . . .

. . . *Katz* . . . established that “property rights are not the sole measure of Fourth Amendment violations,” but did not “snuff[f] out the previously recognized protection for property,” [*Soldal v. Cook County*, 506 U.S. 56, 64 (1992)]. As Justice Brennan explained in his concurrence in [*United States v. Knotts*, 460 U.S. 276 (1983)], *Katz* did not erode the principle “that, when the Government *does* engage in physical intrusion of a constitutionally protected area in order to obtain information, that intrusion may constitute a violation of the Fourth Amendment.” 460 U.S., at 286 (opinion concurring in judgment). . . . *Katz* did not narrow the Fourth Amendment’s scope.⁵

The Government contends that several of our post-*Katz* cases foreclose the conclusion that what occurred here constituted a search. It relies principally on two cases in which we rejected Fourth Amendment challenges to “beepers,” electronic tracking devices that represent another form of electronic monitoring. The first case, *Knotts*, upheld against Fourth Amendment challenge the use of a “beeper” that had been placed in a container of chloroform, allowing law enforcement to monitor the location of the container. We said that there had been no infringement

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of *Knotts*’ reasonable expectation of privacy since the information obtained—the location of the automobile carrying the container on public roads, and the location of the off-loaded container in open fields near *Knotts*’ cabin—had been voluntarily conveyed to the public.⁶ But as we have discussed, the *Katz* reasonable-expectation-of-privacy test has been *added to*, not *substituted for*, the common-law trespassory test. The holding in *Knotts* addressed only the former, since the latter was not at issue. The beeper had been placed in the container before it came into *Knotts*’ possession, with the consent of the then-owner. *Knotts* did not challenge that installation, and we specifically declined to consider its effect on the Fourth Amendment analysis. . . .

The second “beeper” case, *United States v. Karo*, 468 U.S. 705 (1984), does not suggest a different conclusion. There we addressed the question left open by *Knotts*, whether the installation of a beeper in a container amounted to a search or seizure. As in *Knotts*, at the time the beeper was installed the container belonged to a third party, and it did not come into possession of the defendant until later. Thus, the specific question we considered was whether the installation “*with the consent of the original owner* constitute[d] a search or seizure . . . when the container is delivered to a buyer having no knowledge of the presence of the beeper.” *Id.*, at 707 (emphasis added). We held not. The Government, we said, came into physical contact with the container only before it belonged to the defendant *Karo*; and the transfer of the container with the unmonitored beeper inside did not convey any information and thus did not invade *Karo*’s privacy. That conclusion is perfectly consistent with the one we reach here. *Karo* accepted the container as it came to him, beeper and all, and was therefore not entitled to object to the beeper’s presence, even though it was used to monitor the container’s location. *Jones*, who possessed the Jeep at the time the Government trespassorily inserted the information-gathering device, is on much different footing. . . .

Finally, the Government’s position gains little support from our conclusion in *Oliver v. United States*, 466 U.S. 170 (1984), that officers’ information-gathering intrusion on an “open field” did not constitute a Fourth Amendment search even though it was a trespass at common law. Quite simply, an open field, unlike the curtilage of a home, is not one of those protected areas enumerated in the Fourth Amendment. The Government’s physical intrusion on such an area—unlike its intrusion on the “effect” at issue here—is of no Fourth Amendment significance.⁸

B

The concurrence begins by accusing us of applying “18th-century tort law.” That is a distortion. What we apply is an 18th-century guarantee against unreasonable searches, which we believe must provide *at a minimum* the degree of protection it afforded when it was adopted. The concurrence does not share that belief. It would

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apply *exclusively* *Katz*’s reasonable-expectation-of-privacy test, even when that eliminates rights that previously existed.

The concurrence faults our approach for “present[ing] particularly vexing problems” in cases that do not involve physical contact, such as those that involve the transmission of electronic signals. We entirely fail to understand that point. For unlike the concurrence, which would make *Katz* the *exclusive* test, we do not make trespass the exclusive test. Situations involving merely the transmission of electronic signals without trespass would *remain* subject to *Katz* analysis.

In fact, it is the concurrence’s insistence on the exclusivity of the *Katz* test that needlessly leads us into “particularly vexing problems” in the present case. This Court has to date not deviated from the understanding that mere visual observation does not constitute a search. We accordingly held in *Knotts* that “[a] person traveling in an automobile on public thoroughfares has no reasonable expectation of privacy in his movements from one place to another.” 460 U.S., at 281. Thus, even assuming that the concurrence is correct to say that “[t]raditional surveillance” of Jones for a 4-week period “would have required a large team of agents, multiple vehicles, and perhaps aerial assistance,” our cases suggest that such visual observation is constitutionally permissible. It may be that achieving the same result through electronic means, without an accompanying trespass, is an unconstitutional invasion of privacy, but the present case does not require us to answer that question.

And answering it affirmatively leads us needlessly into additional thorny problems. The concurrence posits that “relatively short-term monitoring of a person’s movements on public streets” is okay, but that “the use of longer term GPS monitoring in investigations of *most offenses*” is no good. That introduces yet another novelty into our jurisprudence. There is no precedent for the proposition that whether a search has occurred depends on the nature of the crime being investigated. And even accepting that novelty, it remains unexplained why a 4-week investigation is “surely” too long and why a drug-trafficking conspiracy involving substantial amounts of cash and narcotics is not an “extraordinary offens[e]” which may permit longer observation. What of a 2-day monitoring of a suspected purveyor of stolen electronics? Or of a 6-month monitoring of a suspected terrorist? We may have to grapple with these “vexing problems” in some future case where a classic trespassory search is not involved and resort must be had to *Katz* analysis; but there is no reason for rushing forward to resolve them here. . . .

The judgment of the Court of Appeals for the D.C. Circuit is affirmed.

JUSTICE SOTOMAYOR, concurring.

I join the Court’s opinion because I agree that a search within the meaning of the Fourth Amendment occurs, at a minimum, “[w]here, as here, the Government obtains information by physically intruding on a constitutionally protected area.” . . .

Of course, the Fourth Amendment is not concerned only with trespassory intrusions on property. . . . In [*Katz v. United States*, 389 U.S. 347, 353 (1967)], this Court enlarged its then-prevailing focus on property rights by announcing that the reach of the Fourth Amendment does not “turn upon the presence or absence

of a physical intrusion.” *Id.*, at 353. As the majority’s opinion makes clear, however, *Katz*’s reasonable-expectation-of-privacy test augmented, but did not displace or diminish, the common-law trespassory test that preceded it. . . . Justice Alito’s approach, which discounts altogether the constitutional relevance of the Government’s physical

intrusion on Jones’ Jeep, erodes that longstanding protection for privacy expectations inherent in items of property that people possess or control. By contrast, the trespassory test applied in the majority’s opinion reflects an irreducible constitutional minimum: When the Government physically invades personal property to gather information, a search occurs. The reaffirmation of that principle suffices to decide this case.

Nonetheless, as Justice Alito notes, physical intrusion is now unnecessary to many forms of surveillance. With increasing regularity, the Government will be capable of duplicating the monitoring undertaken in this case by enlisting factory-or owner-installed vehicle tracking devices or GPS-enabled smartphones. In cases of electronic or other novel modes of surveillance that do not depend upon a physical invasion on property, the majority opinion’s trespassory test may provide little guidance. But “[s]ituations involving merely the transmission of electronic signals without trespass would *remain* subject to *Katz* analysis.” As Justice Alito incisively observes, the same technological advances that have made possible nontrespassory surveillance techniques will also affect the *Katz* test by shaping the evolution of societal privacy expectations. Under that rubric, I agree with Justice Alito that, at the very least, “longer term GPS monitoring in investigations of most offenses impinges on expectations of privacy.”

In cases involving even short-term monitoring, some unique attributes of GPS surveillance relevant to the *Katz* analysis will require particular attention. GPS monitoring generates a precise, comprehensive record of a person’s public movements that reflects a wealth of detail about her familial, political, professional, religious, and sexual associations. The Government can store such records and efficiently mine them for information years into the future. And because GPS monitoring is cheap in comparison to conventional surveillance techniques and, by design, proceeds surreptitiously, it evades the ordinary checks that constrain abusive law enforcement practices: “limited police resources and community hostility.” *Illinois v. Lidster*, 540 U.S. 419, 426 (2004).

Awareness that the Government may be watching chills associational and expressive freedoms. And the Government’s unrestrained power to assemble data that reveal private aspects of identity is susceptible to abuse. The net result is that GPS monitoring—by making available at a relatively low cost such a substantial quantum of intimate information about any person whom the Government, in its unfettered discretion, chooses to track—may “alter the relationship between citizen and government in a way that is inimical to democratic society.” *United States v. Cuevas-Perez*, 640 F.3d 272, 285 (C.A.7 2011) (Flaum, J., concurring).

I would take these attributes of GPS monitoring into account when considering the existence of a reasonable societal expectation of privacy in the sum of one’s public movements. I would ask whether people reasonably expect that their movements will be recorded and aggregated in a manner that enables the Government to ascertain, more or less at will, their political and religious beliefs, sexual habits, and so on. I do not regard as dispositive the fact that the Government might obtain the fruits of GPS monitoring through lawful conventional surveillance techniques. I would also consider the appropriateness of entrusting to the Executive, in the absence of any oversight from a coordinate branch, a tool so amenable to misuse, especially in light of the Fourth Amendment’s goal to curb arbitrary exercises of police power and prevent “a too permeating police surveillance,” *United States v. Di Re*, 332 U.S. 581, 595 (1948).

More fundamentally, it may be necessary to reconsider the premise that an individual has no reasonable expectation of privacy in information voluntarily disclosed to third parties. This approach is ill suited to the digital age, in which people reveal a great deal of information about themselves to third parties in the course of carrying out mundane tasks. People disclose the phone numbers that they dial or text to their cellular providers; the URLs that they visit and the e-mail addresses with which they correspond to their Internet service providers; and the books, groceries, and medications they purchase to online retailers. Perhaps, as Justice Alito notes, some people may find the “tradeoff” of privacy for convenience “worthwhile,” or come to accept this “diminution of privacy” as “inevitable,” and perhaps not. I for one doubt that people would accept without complaint the warrantless disclosure to the Government of a list of every Web site they had visited in the last week, or month, or year. But whatever the societal expectations, they can attain constitutionally protected status only if our Fourth Amendment jurisprudence ceases to treat secrecy as a prerequisite for privacy. I would not assume that all information voluntarily disclosed to some member of the public for a limited purpose is, for that reason alone, disentitled to Fourth Amendment protection.

Resolution of these difficult questions in this case is unnecessary, however, because the Government’s physical intrusion on Jones’ Jeep supplies a narrower basis for decision. I therefore join the majority’s opinion.

JUSTICE ALITO, with whom JUSTICE GINSBURG, JUSTICE BREYER, and JUSTICE KAGAN join, concurring in the judgment.

This case requires us to apply the Fourth Amendment’s prohibition of unreasonable searches and seizures to a 21st-century surveillance technique, the use of a Global Positioning System (GPS) device to monitor a vehicle’s movements for an extended period of time. Ironically, the Court has chosen to decide this case based on 18th-century tort law. By attaching a small GPS device to the underside of the vehicle that respondent drove, the law enforcement officers in this case engaged in conduct that might have provided grounds in 1791 for a suit for trespass to chattels. And for this reason, the Court concludes, the installation and use of the GPS device constituted a search.

This holding, in my judgment, is unwise. It strains the language of the Fourth Amendment; it has little if any support in current Fourth Amendment case law; and it is highly artificial.

I would analyze the question presented in this case by asking whether respondent’s reasonable expectations of privacy were violated by the long-term monitoring of the movements of the vehicle he drove.

I

The Fourth Amendment prohibits “unreasonable searches and seizures,” and the Court makes very little effort to explain how the attachment or use of the GPS device fits within these terms. The Court does not contend that there was a seizure. A seizure of property occurs when there is “some meaningful interference with an individual’s possessory interests in that property,” *United States v. Jacobsen*, 466 U.S. 109, 113 (1984), and here there was none. Indeed, the success of the surveillance technique that the officers employed was dependent on the fact that the GPS did not interfere

in any way with the operation of the vehicle, for if any such interference had been detected, the device might have been discovered.

The Court does claim that the installation and use of the GPS constituted a search, but this conclusion is dependent on the questionable proposition that these two procedures cannot be separated for purposes of Fourth Amendment analysis. If these two procedures are analyzed separately, it is not at all clear from the Court's opinion why either should be regarded as a search. It is clear that the attachment of the GPS device was not itself a search; if the device had not functioned or if the officers had not used it, no information would have been obtained. And the Court does not contend that the use of the device constituted a search either. On the contrary, the Court accepts the holding in *United States v. Knotts*, 460 U.S. 276 (1983), that the use of a surreptitiously planted electronic device to monitor a vehicle's movements on public roads did not amount to a search.

The Court argues—and I agree—that “we must ‘assur[e] preservation of that degree of privacy against government that existed when the Fourth Amendment was adopted.’” (quoting *Kyllo v. United States*, 533 U.S. 27, 34 (2001)). But it is almost impossible to think of late-18th-century situations that are analogous to what took place in this case. (Is it possible to imagine a case in which a constable secreted himself somewhere in a coach and remained there for a period of time in order to monitor the movements of the coach's owner?³) The Court's theory seems to be that the concept of a search, as originally understood, comprehended any technical trespass that led to the gathering of evidence, but we know that this is incorrect. At common law, any unauthorized intrusion on private property was actionable, but a trespass on open fields, as opposed to the “curtilage” of a home, does not fall within the scope of the Fourth Amendment because private property outside the curtilage is not part of a “hous[e]” within the meaning of the Fourth Amendment.

The Court's reasoning in this case is very similar to that in the Court's early decisions involving wiretapping and electronic eavesdropping, namely, that a technical trespass followed by the gathering of evidence constitutes a search. In the early electronic surveillance cases, the Court concluded that a Fourth Amendment search occurred when private conversations were monitored as a result of an “unauthorized physical penetration into the premises occupied” by the defendant. *Silverman v. United States*, 365 U.S. 505, 509 (1961). In *Silverman*, police officers listened to conversations in an attached home by inserting a “spike mike” through the wall that this house shared with the vacant house next door. *Id.*, at 506. This procedure was held to be a search because the mike made contact with a heating duct on the other side of the wall and thus “usurp[ed] . . . an integral part of the premises.” *Id.*, at 511.

By contrast, in cases in which there was no trespass, it was held that there was no search. Thus, in *Olmstead v. United States*, 277 U.S. 438 (1928), the Court found that the Fourth Amendment did not apply because “[t]he taps from house lines were made in the streets near the houses.” *Id.*, at 457. . . .

This trespass-based rule was repeatedly criticized. In *Olmstead*, Justice Brandeis wrote that it was “immaterial where the physical connection with the telephone wires was made.” 277 U.S., at 479 (dissenting opinion). Although a private conversation transmitted by wire did not fall within the literal words of the Fourth Amendment,

he argued, the Amendment should be understood as prohibiting “every unjustifiable intrusion by the government upon the privacy of the individual.” *Id.*, at 478. . . .

Katz v. United States, 389 U.S. 347 (1967), finally did away with the old approach, holding that a trespass was not required for a Fourth Amendment violation. . . .

Under this approach, as the Court later put it when addressing the relevance of a technical trespass, “an actual trespass is neither necessary *nor sufficient* to establish a constitutional violation.” *United States v. Karo*, 468 U.S. 705, 713 (emphasis added). In *Oliver [v. United States]*, 466 U.S. 170 (1984),] the Court

wrote:

“The existence of a property right is but one element in determining whether expectations of privacy are legitimate. ‘The premise that property interests control the right of the Government to search and seize has been discredited.’ Katz, 389 U.S., at 353 (quoting *Warden v. Hayden*, 387 U.S. 294, 304 (1967); some internal quotation marks omitted).” 466 U.S., at 183. . . .

III

Disharmony with a substantial body of existing case law is only one of the problems with the Court’s approach in this case.

I will briefly note four others. First, the Court’s reasoning largely disregards what is really important (the *use* of a GPS for the purpose of longterm tracking) and instead attaches great significance to something that most would view as relatively minor (attaching to the bottom of a car a small, light object that does not interfere in any way with the car’s operation). Attaching such an object is generally regarded as so trivial that it does not provide a basis for recovery under modern tort law. But under the Court’s reasoning, this conduct may violate the Fourth Amendment. . . .

Second, the Court’s approach leads to incongruous results. If the police attach a GPS device to a car and use the device to follow the car for even a brief time, under the Court’s theory, the Fourth Amendment applies. But if the police follow the same car for a much longer period using unmarked cars and aerial assistance, this tracking is not subject to any Fourth Amendment constraints.

In the present case, the Fourth Amendment applies, the Court concludes, because the officers installed the GPS device after respondent’s wife, to whom the car was registered, turned it over to respondent for his exclusive use. But if the GPS had been attached prior to that time, the Court’s theory would lead to a different result. The Court proceeds on the assumption that respondent “had at least the property rights of a bailee,” but a bailee may sue for a trespass to chattel only if the injury occurs during the term of the bailment. See 8A Am. Jur. 2d, Bailment §166, pp. 685-686 (2009). So if the GPS device had been installed before respondent’s wife gave him the keys, respondent would have no claim for trespass—and, presumably, no Fourth Amendment claim either.

Third, under the Court’s theory, the coverage of the Fourth Amendment may vary from State to State. If the events at issue here had occurred in a community property State or a State that has adopted the Uniform Marital Property Act, respondent would likely be an owner of the vehicle, and it would not matter whether the GPS was installed before or after his wife turned over the keys. . . .

Fourth, the Court’s reliance on the law of trespass will present particularly vexing problems in cases involving surveillance that is carried out by making electronic, as opposed to physical, contact with the item to be tracked. For example,

suppose that the officers in the present case had followed respondent by surreptitiously activating a stolen vehicle detection system that came with the car when it was purchased. Would the sending of a radio signal to activate this system constitute a trespass to chattels? Trespass to chattels has traditionally required a physical touching of the property. In recent years, courts have wrestled with the application of this old tort in cases involving unwanted electronic contact with computer systems, and some have held that even the transmission of electrons that occurs when a communication is sent from one computer to another is enough. But may such decisions be followed in applying the Court’s trespass theory? Assuming

that what matters under the Court's theory is the law of trespass as it existed at the time of the adoption of the Fourth Amendment, do these recent decisions represent a change in the law or simply the application of the old tort to new situations?

IV

The *Katz* expectation-of-privacy test avoids the problems and complications noted above, but it is not without its own difficulties. It involves a degree of circularity, see *Kyllo*, 533 U.S., at 34, and judges are apt to confuse their own expectations of privacy with those of the hypothetical reasonable person to which the *Katz* test looks. In addition, the *Katz* test rests on the assumption that this hypothetical reasonable person has a well-developed and stable set of privacy expectations. But technology can change those expectations. Dramatic technological change may lead to periods in which popular expectations are in flux and may ultimately produce significant changes in popular attitudes. New technology may provide increased convenience or security at the expense of privacy, and many people may find the tradeoff worthwhile. And even if the public does not welcome the diminution of privacy that new technology entails, they may eventually reconcile themselves to this development as inevitable.

On the other hand, concern about new intrusions on privacy may spur the enactment of legislation to protect against these intrusions. This is what ultimately happened with respect to wiretapping. After *Katz*, Congress did not leave it to the courts to develop a body of Fourth Amendment case law governing that complex subject. Instead, Congress promptly enacted a comprehensive statute, see 18 U.S.C. §§2510-2522 (2006 ed. and Supp. IV), and since that time, the regulation of wiretapping has been governed primarily by statute and not by case law. . . .

Recent years have seen the emergence of many new devices that permit the monitoring of a person's movements. . . .

Perhaps most significant, cell phones and other wireless devices now permit wireless carriers to track and record the location of users. . . .

V

In the pre-computer age, the greatest protections of privacy were neither constitutional nor statutory, but practical. Traditional surveillance for any extended period of time was difficult and costly and therefore rarely undertaken. The surveillance at issue in this case—constant monitoring of the location of a vehicle for four weeks—would have required a large team of agents, multiple vehicles, and perhaps aerial assistance. Only an investigation of unusual importance could have justified

such an expenditure of law enforcement resources. Devices like the one used in the present case, however, make long-term monitoring relatively easy and cheap. In circumstances involving dramatic technological change, the best solution to privacy concerns may be legislative. A legislative body is well situated to gauge changing public attitudes, to draw detailed lines, and to balance privacy and public safety in a comprehensive way.

To date, however, Congress and most States have not enacted statutes regulating the use of GPS tracking technology for law enforcement purposes. The best that we can do in this case is to apply existing Fourth Amendment doctrine and to ask whether the use of GPS tracking in a particular case involved a degree of intrusion that a reasonable person would not have anticipated.

Under this approach, relatively short-term monitoring of a person's movements on public streets accords with expectations of privacy that our society has recognized as reasonable. But the use of longer term GPS monitoring in investigations of most offenses impinges on expectations of privacy. For such offenses, society's expectation has been that law enforcement agents and others would not—and indeed, in the main, simply could not—secretly monitor and catalogue every single movement of an individual's car for a very long period. In this case, for four weeks, law enforcement agents tracked every movement that respondent made in the vehicle he was driving. We need not identify with precision the point at which the tracking of this vehicle became a search, for the line was surely crossed before the 4-week mark. Other cases may present more difficult questions. . . . We also need not consider whether prolonged GPS monitoring in the context of investigations involving extraordinary offenses would similarly intrude on a constitutionally protected sphere of privacy. In such cases, long-term tracking might have been mounted using previously available techniques.

For these reasons, I conclude that the lengthy monitoring that occurred in this case constituted a search under the Fourth Amendment. I therefore agree with the majority that the decision of the Court of Appeals must be affirmed.

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lgouldin@law.syr.edu