Understanding Privacy and Data Protection: What You Need to Know

By Richard M. Thompson II, Emily C. Barbour and Alison M. Smith

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"*Our 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."*[1]

Technology is a rapidly growing field in our society and our courts are always trying to keep up. What begins as a luxury quickly becomes a necessity in our culture, causing courts to constantly interpret the application of longstanding laws, to changes and revolutions in the newest technological developments. In *The Fourth Amendment Implications of Technological Shifts and Selected Trends*, authors Richard M. Thompson II, Emily C. Barbour and Alison M. Smith explore how the principles of the Fourth Amendment are being applied to a multitude of

[1] RICHARD M. THOMPSON II ET AL., THE FOURTH AMENDMENT IMPLICATIONS OF TECHNOLOGICAL SHIFTS AND SELECTED TRENDS 5 (Lucille E. Huff e2014)

technological advances.[2] Thompson II primarily focuses on the third-party doctrine and the differences in privacy protections in the physical world, traditional computing and cloud computing. He also concentrates on how drones are being used in domestic surveillance operations and how that impacts our Fourth Amendment protections. Barbour zones in on the Fourth Amendment protections of DNA databanking, while Smith delves in to law enforcements use of Global Positioning Systems (GPS) to monitor motor vehicles and its Fourth Amendment implications.

Mr. Thompson II received his JD from New England School of Law and currently is a legislative attorney for the Congressional Research Service, which works exclusively for the United States Congress. Ms. Barbour is an attorney who has been an author for Penny Hill Press, Inc. since 2010. Ms. Barbour has published a multitude of works concerning a wide array of legal topics and cases for Penny Hill Press, Inc. Lastly, Ms. Smith received her JD from the University of Dayton School of Law and is also a legislative attorney for the Congressional Research Service.

Chapter one discusses life before there were emails, instant messaging, and other forms of electronic communication and how simple it was for the courts to establish if a government investigation amounted to a Fourth Amendment "search."[3] If law enforcement interfered on your person, house, papers, or property that act was determined to be a search, which had to be "reasonable" under the circumstances.[4] However, with the dawn of ethereal forms of

[2] *See* Thompson II, *supra* note 1, at 1-2.
[3] *See* Thompson II, *supra* note 1, at 3.
[4] *See* Thompson II, *supra* note 1, at 6

communication, like the telephone or the Internet, it became a great deal more complex for judges to establish when particular surveillance practices violated Fourth Amendment rights.[5] This chapter explores the third party-doctrine, as well as its historical background, its legal and practical underpinnings, and its present and potential future applications.[6] It explores the major third-party doctrine cases and fits them within the larger Fourth Amendment framework.[7] It further investigates an assortment of doctrinal and practical arguments for and against its sustained application.[8] Lastly, this chapter illustrates congressional efforts to supplement legal protection for access to third-party records, as well as suggesting possible future directions in the law.[9]

Chapter two discusses the new form of communication called cloud computing. Cloud computing is quickly becoming a central part of how we talk to one another, purchase music, share photos, conduct business, pay our bills, shop, and bank.[10] The chapter illustrates how communication is completely moving away from the physical realm (writing letters) and moving in to the digital world (writing e-mails).[11] "Cloud computing is a web-based service that allows users to access anything from e-mail to social media on a third-party computer."[12] The premise of this chapter is the legality of government and law enforcement attempting to infiltrate the stored information on the third-party computer to conduct criminal investigations, prevent

[5] *See* Thompson II, *supra* note 1, at 14-15
[6] *See* Thompson II, *supra* note 1, at 5,9, 14-17.
[7] *See* Thompson II, *supra* note 1, at 14-17.
[8] *See* Thompson II, *supra* note 1, at 17-22
[9] *See* Thompson II, *supra* note 1, at 26-28.
[10] *See* Thompson II, *supra* note 1, at 39
[11] *See* Thompson II, *supra* note 1, at 39
[12] *See* Thompson II, *supra* note 1, at 39

cybercrime, and foil terrorist attacks.[13] The chapter delineates what legal protections are in place for information shared and stored in the cloud, the legal processes the government must follow to acquire this information and how the rules vary from those applied in the physical realm of communication.[14] It concludes that there have been numerous proposals from legislature to enhance Fourth Amendment protections for digital communications at least comparable to the protections afforded to communications in the physical realm.[15]

Chapter three discusses how Deoxyribonucleic acid (DNA) databases are increasingly being implemented on any person taken in to law enforcement custody.[16] As databanking DNA becomes an increasing practice, challenges under the Fourth Amendment have multiplied.[17] The chapter delves in to the statutory framework in which most states authorize compulsory collection of DNA samples from any persons convicted for a particular crime.[18] The chapter further discusses the expansion of statutory authorities for DNA profiling where those who are arrested or detained must forfeit their DNA.[19] The chapter closes acknowledging that new advances in the science of forensic analysis and databanking could possibly have significant legal impact and cause courts to reevaluate their previous legal conclusions and analysis.[20]

[13] *See* Thompson II, *supra* note 1, at 47
[14] *See* Thompson II, *supra* note 1, at 52
[15] *See* Thompson II, *supra* note 1, at 55
[16] *See* Thompson II, *supra* note 1, at 63
[17] *See* Thompson II, *supra* note 1, at 65
[18] *See* Thompson II, *supra* note 1, at 67
[19] *See* Thompson II, *supra* note 1, at 72
[20] *See* Thompson II, *supra* note 1, at 79

Chapter four focuses exclusively on the Global Positioning System (GPS).[21] More precisely, the increased use of GPS by federal and local law enforcement to investigate criminal activity.[22] The chapter discusses both legal and societal considerations on the increased reliance on GPS technology.[23] Courts (with few exceptions) have ruled that the Fourth Amendment of the U.S. Constitution requires law enforcement to obtain a warrant before conducting a search or making a seizure.[24] In summary, chapter four explains the basics of GPS technology, society's reliance on it, and some of the related legal and privacy implications.[25] Furthermore, the chapter examines legislative and judicial responses on both federal and state levels.[26]

Finally, chapter five gets the reader to envision the prospect of domestic drone use and our government's surveillance authority.[27] The chapter delineates the different types of drones that are used and specific types of monitoring.[28] The author in this chapter (Thompson II) acknowledges that very few drones are flown over U.S. soil but warns that the Federal Aviation Administration predicts that 30,000 drones will fill the nation's skies in less than 20 years.[29] The chapter primarily discusses and assesses the use of drones under the application of the Fourth Amendment.[30] This chapter is the only chapter that relies on a hypothetical analysis from past

[21] *See* Thompson II, *supra* note 1, at 94
[22] *See* Thompson II, *supra* note 1, at 95
[23] *See* Thompson II, *supra* note 1, at 95-96
[24] *See* Thompson II, *supra* note 1, at 98-99
[25] *See* Thompson II, *supra* note 1, at 103-104
[26] *See* Thompson II, *supra* note 1, at 104-105
[27] *See* Thompson II, *supra* note 1, at 113
[28] *See* Thompson II, *supra* note 1, at 114-115
[29] *See* Thompson II, *supra* note 1, at 114
[30] *See* Thompson II, *supra* note 1, at 123

case law to determine what the outcome would potentially be if drones were flown domestically.[31]

The book is set up simply as a collection of 5 case comments. It doesn't have to be read cover to cover, as there are 5 completely different subject areas within the scope of the Fourth Amendment. The book is pricey and although it is informative, the information isn't groundbreaking or revolutionary. Overall, the book is a very informative read if you're a law student with a background in constitutional law criminal procedure. Otherwise, reading this is like walking in on a movie that started 45 minutes ago. Because they are case comments, by the end of each chapter it leaves the reader feeling like the author is beating a dead horse. You almost say to yourself: "Ok! Ok! I got it!" So if you're a casual reader, this book is not for you. If you are reading this because you need more information to write a case comment or note, this book is definitely for you. I cannot stress enough that this book does not read like a book. There is no ebb and flow to it. It is five case comments strung together because they all have some aspect concerning Fourth Amendment protections and technology. The book could be valuable for an audience that needs to review for an exam that contains an element of the Fourth Amendment, and its scope of protections and applications. If you are looking for a book that includes revolutionary perspective on the scope of Fourth Amendment protections, you need only read chapter five. The goal of this book was clearly to discuss all of the technological developments and advancements in this country and how courts are applying the Fourth

[31] *See* Thompson II, *supra* note 1, at 129-131

Amendment to them today. The goal was definitely accomplished from a legal and doctrinal standpoint.