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ATTORNEYS AT LAW

Where Were You on January 11, 2017

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October 2017

Do you remember where you were on January 11, 2017? Your cell phone service provider does.

The more we rely on technology, the more detailed a technological footprint we leave behind. A recent study showed that on average, American millennials check their cell phones about 82 times a day. We carry our cell phones everywhere we go and they communicate with cell phone towers—even when we aren't using them—about every seven seconds. Being constantly connected has become the norm, but privacy laws have not kept pace with the technological advances.

If you have looked at your cell phone bill recently, you may have noticed that it contains a high level of detail about your talk activity, such as date and time of a call, the duration, the other number, and the "origination" and "destination" points. What you may not know, is that your cell phone service provider collects and stores even more detailed information: your location for the duration of the call and your movements when you're not even using your phone. Depending on how close the cell towers are located in your area and which technology is being used, the ping of your cell phone on a tower or towers can illustrate your location from within a two-mile radius, to a specific home or floor in a building.

This detail can divulge a lot about the movements of a person over time, and law enforcement has been increasingly leveraging this data. For example, Verizon now receives about 50,000 demands from law enforcement for cellphone location data annually. AT&T receives over 75,000 such demands annually.

The demands are often made without first obtaining warrants (requiring probable cause), however. Instead, law enforcement seeks orders under the Stored Communications Act. The government need only submit "specific and articulable facts showing that there are reasonable grounds to believe that the contents of a wire or electronic communication...are relevant and material to an ongoing criminal investigation."

Challenges to law enforcement's use of the Stored Communications Act to do an end run around the Fourth Amendment have been ongoing across the country. Proponents argue that the information is not private because it has been shared with a third party, i.e., the cell phone provider, eliminating the warrant requirement. Opponents argue that the technology has advanced considerably since the third-party doctrine was adopted. The detailed location information being shared with cell phone providers isn't necessarily shared knowingly.

Moreover, the only way to avoid sharing the sensitive information—which can reveal details about a person’s familial, political, professional, religious, and sexual associations—is to forego cell phone use altogether, which is increasingly impossible in this era.

The Sixth Circuit Court of Appeals, which includes Michigan, has upheld the right of law enforcement to access historical cell service location information. The United States Supreme Court announced in June it will hear the appeal sometime this term, but arguments have not been scheduled.