

VLP Partner Michael Whitener Interviewed on KCBS Radio in San Francisco About a Supreme Court Digital Privacy Case

VLP Privacy Partner Michael Whitener was a guest on *KCBS All News Radio* in San Francisco in a segment about a landmark digital privacy case being argued before the United States Supreme Court.

In the case of *Carpenter v. United States*, lawyers for Timothy Carpenter, a man convicted of armed robbery of several Radio Shack stores, are arguing that cellphone location data used to identify Carpenter as the culprit should be thrown out because it was obtained without a warrant. (Ironically, the robbers were stealing cellphones from the Radio Shacks.)

Mr. Whitener told *KCBS Radio*, “The case involves a key issue of our time, which is the right to digital privacy.”

He explained that the government’s obtaining of Carpenter’s cellphone locational data without a warrant (and instead under the lower threshold of the Stored Communications Act) could be a violation of the Fourth Amendment of the Constitution, which protects against unreasonable searches and seizures.

Mr. Whitener went on to note that when data is voluntarily disclosed to a third party, it falls under the so-called “third-party doctrine,” which means it’s not protected by the Fourth Amendment. So a key issue in the Carpenter case is whether Carpenter can be said to have willingly disclosed his locational data to the cell phone company.

Mr. Whitener also noted that, while the Supreme Court has previously determined that data on one’s cellphone is protected by the Fourth Amendment, the protections are less clear in the cloud and with the advent of the Internet of Things.

“The notion behind the Fourth Amendment was that your home is your castle, so you’re protected from forcible entry by the police without a warrant,” he said. “But that was in the analog world. Now the same principles should apply to our digital lives. Otherwise, in the digital era, the Fourth Amendment is at risk of becoming a dead letter.”