10-1978

Smith v. Maryland

Lewis F. Powell Jr.

I could join 3

This case squarely presents Q whether 4th Amend. requires a search warrant before installing a "pen register". There is Q we have reserved. If we want to address this issue - or to which the lower courts may be in doubt (tho no clear conflict) - this presents a good opportunity. Opinions below are good.

PRELIMINARY MEMORANDUM

Dec. 1
~~October~~ 27, 1978 Conference
List ~~1~~ 2, Sheet ~~3~~ 2

11-21-78 - Please see back for comment on response. E.G.

No. 78-5374

SMITH (robber)	Cert to Md. Ct. App. (Murphy, Smith, Levine, Orth;	
v.	Digges, Eldridge, Cole, dissenting)	
MARYLAND	State/Criminal	Timely

1. SUMMARY: Does the installation of a pen register constitute a search within the meaning of the Fourth Amendment?

2. FACTS: Ms. McDonough was robbed. She gave police a description of the robber and of a 1975 Monte Carlo that she had observed in her neighborhood shortly before the robbery. After the robbery, she began receiving threatening and obscene phone calls from a man who identified

Please see p. 6.

himself as the person who robbed her. Police spotted a man who met the description of the robber driving a 1975 Monte Carlo. By tracing the license number of the vehicle, police learned that the car was registered in petr's name. At the request of the police, the telephone company installed a pen register at its central offices to record the phone numbers of all calls from the telephone at petr's residence. Police did not obtain a warrant or court order before installing the pen register. Thereafter, the pen register showed that a call was made to McDonough's home. Armed with a search warrant, police searched petr's home and found a notation of McDonough's telephone number next to petr's phone. McDonough identified petr as the robber at a line-up. At a pretrial suppression hearing, petr argued that evidence resulting from the installation of the pen register should be suppressed because absent a court order or search warrant, the use of a pen register constituted an illegal search and seizure in violation of the Fourth Amendment. The trial judge denied the motion, petr was found guilty of robbery and sentenced to 10 years imprisonment. The Maryland Court of Appeals affirmed.

3. DECISION BELOW: The majority stated that under Katz v. United States, 389 U.S. 347 (1967), the question whether installation of a pen register requires compliance with the Fourth Amendment depends on "whether a telephone subscriber has a constitutionally protected expectation that the numbers which he dials will remain private." The court held that a subscriber does not have a constitutionally protected ex-

pectation of privacy with respect to the numbers dialed for two reasons. First, every subscriber realizes that the phone company keeps records of toll calls and there seems no valid distinction between the expectations associated with local calls and toll calls because most subscribers probably have no "real knowledge" of the geographic boundaries on their "local call" zone. Second, all telephone subscribers use equipment owned by a third party and therefore it is unreasonable to assume that the fact of one's call passing through the system will remain a total secret from the phone company. While the Fourth Amendment protects the content of conversations, pen registers do not reveal that content and they are regularly used by the phone company without a court order "for the purposes of checking billing operations, detecting fraud and preventing violations of the law." United States v. New York Tel., 434 U.S. 159, 174-75 (1977). The court found support for its conclusions in cases dealing with the attachment of transmitters to informants, inspection of bank deposit slips turned over to the bank, use of beepers, and reading of mail covers, all of which either this Court or other courts have held do not violate the Fourth Amendment. The majority cited several cases in which courts have held that telephone subscribers have no reasonable expectation that records of their calls will not be made. See, e.g., Hodge v. Mountain States Tel. & Tel., 555 F.2d 254 (9th Cir. 1977); United States v. Clegg, 509 F.2d 605 (5th Cir. 1975).

The dissenters believe that the installation of a pen register constitute a search within the meaning of the Fourth Amendment. While a subscriber

may expect that completed long distance calls will be recorded, the subscriber does not expect that the phone company will monitor the telephone numbers of local calls. Contrary to the majority's view, subscribers are aware of their "local call" zone because, at least in Maryland, they must dial the prefix "1" before they can make a call beyond that zone. "The defendant, by the simple act of dialing local numbers, did not reasonably intend to reveal information; he merely made use of machinery in particular ways which, without the police intrusion, would have remained fully private." They found the analogy to the transmitter-on-informer and bank deposit slip cases unpersuasive because the phone company is not a "party" to telephone conversations in the same sense as the informer and bank are parties to the conversations or bank transactions. Mail cover cases also are distinguishable since anything written on the outside of an envelope is placed in the plain view of the public. Finally, the dissenters noted that several courts have held that the installation of pen registers is subject to Fourth Amendment requirements. See, e.g., Southwestern Bell Tel. v. United States, 546 F.2d 243 (8th Cir. 1976), cert. denied, ____ U.S. ____ (1978); New York Tel. v. United States, 538 F.2d 956 (2d Cir. 1976), cert. denied, 434 U.S. 149 (1977); United States v. Illinois Bell Tel., 531 F.2d 809 (7th Cir. 1976); United States v. John, 508 F.2d 1134 (8th Cir.), cert. denied, 421 U.S. 962 (1975).

4. CONTENTIONS: Petr simply repeats the arguments of the dissenters. He claims that there is a split among the lower courts on this question as evidenced by the cases relied on by the majority and dissenters and

that the Court should grant cert in this case to resolve the conflict. Finally, he argues that the following statement by Mr. Justice Powell, concurring and dissenting, in United States v. Giordano, 416 U.S. 505, 553-54 (1974) "should be dispositive of this issue":

> "Because a pen register is not subject to the provisions of Title III, the permissibility of its use by law enforcement authorities depends entirely on compliance with the constitutional requirements of the Fourth Amendment."

LFP

5. DISCUSSION: This Court has not yet determined whether pen register surveillance is subject to the requirements of the Fourth Amendment. The question was specifically reserved in United States v. New York Tel., 434 U.S. 159, 165 n. 7 (1977). And in a footnote following the above-quoted statement by Mr. Justice Powell in Giordano, he stated that he did not have to address the question whether the use of a pen register constitutes a search because, assuming the applicability of the Fourth Amendment, its requirements were satisfied in that case. 416 U.S. at 554 n. 4. The claimed split in the circuits on this question may be more apparent than real. The court in John specifically declined to decide whether the use of pen registers constitutes a search. None of the other cases really addressed the question whether use of the device is a search; instead, they simply quoted the statement from Mr. Justice Powell relied on by petr and assumed that the Fourth Amendment governs installation of pen registers, apparently without recognizing that Mr. Justice Powell declined to decide that question. In any event, in all of the cases relied on by the dissenters, the Government had secured a

court order or warrant before installing the pen register. Hodge, supra, relied on by the majority, was a § 1983 action against the telephone company in which the CA 9 held that, assuming state action, the expectation of privacy protected by the Fourth Amendment attaches to the content of a telephone conversation and not to the fact that the conversation took place. In Clegg, supra, the CA 5 stated in dicta that the overnment's use of a pen register would not be subject to the Fourth Amendment's requirements. Thus, there is no clear conflict in the "holdings" of the cases cited, although the predilections of the courts cited seem obvious and those predispositions do differ.

Should the Court be interested in addressing this issue, despite the lack of a clear conflict below, this case may be a good candidate. The opinions below are well researched and thoughtful, and the factual setting of this case is uncomplicated and squarely serves up the issue.

There is no response, but I understand that one already has been requested.

10/20/78 Kravitz Op in petn.
CMS

This is an important question, because pen registers are a widely-used instrument of law enforcement; frequently they are used to provide the factual showing necessary for wiretap approval. This case is attractive because it is uncomplicated and the issue is unobstructed by other, collateral questions. I would be inclined to grant.

E.G.

11-21-78

A brief response has been received. It does no more than argue that the decision below was correct on the merits, although it concedes that this Court has reserved the question.

E.A.

Argued ....., 19... *Assigned* ....., 19... No. 78-5374

Submitted ....., 19... *Announced* ....., 19...

SMITH

vs.

MARYLAND

Granted

	HOLD FOR	CERT. G	CERT. D	JURISDICTIONAL STATEMENT N	JURISDICTIONAL STATEMENT POST	JURISDICTIONAL STATEMENT DIS	JURISDICTIONAL STATEMENT AFF	MERITS REV	MERITS AFF	MOTION G	MOTION D	ABSENT	NOT VOTING
Burger, Ch. J.		✓	✓										
Brennan, J.		✓											
Stewart, J.		✓											
White, J.			✓										
Marshall, J.						join 4							
Blackmun, J.			✓										
Powell, J.		✓											
Rehnquist, J.			✓										
Stevens, J.		✓											

out
Statement
at end

Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Blackmun

Circulated: 23 MAY 1979

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78–5374

Out - Due to my Surgery

Michael Lee Smith, Petitioner, *v.* State of Maryland.	On Writ of Certiorari to the Court of Appeals of Maryland.

[June —, 1979]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

This case presents the question whether the installation and use of a pen register[1] constitutes a "search" within the meaning of the Fourth Amendment,[2] made applicable to the States through the Fourteenth Amendment. *Mapp* v. *Ohio*, 367 U. S. 643 (1961).

I

On March 5, 1976, in Baltimore, Md., Patricia McDonough was robbed. She gave the police a description of the robber and of a 1975 Monte Carlo automobile she had observed near the scene of the crime. Tr. 66–68. After the robbery,

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[1] "A pen register is a mechanical device that records the numbers dialed on a telephone by monitoring the electrical impulses caused when the dial on the telephone is released. It does not overhear oral communications and does not indicate whether calls are actually completed." *United States* v. *New York Tel. Co.*, 434 U. S. 159, 161 n. 1 (1977). A pen register is "usually installed at a central telephone facility [and] records on a paper tape all numbers dialed from [the] line" to which it is attached. *United States* v. *Giordano*, 416 U. S. 505, 549 n. 1 (1974) (opinion concurring in part and dissenting in part). See also *United States* v. *New York Tel. Co.*, 434 U. S., at 162.

[2] "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U. S. Const., Amdt. 4.

McDonough began receiving threatening and obscene phone calls from a man identifying himself as the robber. On one occasion, the caller asked that she step out on her front porch; she did so, and saw the 1975 Monte Carlo she had earlier described to police moving slowly past her home. *Id.*, at 70. On March 16, police spotted a man who met McDonough's description driving a 1975 Monte Carlo in her neighborhood. *Id.*, at 71–72. By tracing the license plate number, police learned that the car was registered in the name of petitioner, Michael Lee Smith. *Id.*, at 72.

The next day, the telephone company, at police request, installed a pen register at its central offices to record the numbers dialed from the telephone at petitioner's home. *Id.*, at 73, 75. Police did not get a warrant or court order before having the pen register installed. The register revealed that on March 17 a call was placed from petitioner's home to McDonough's phone. *Id.*, at 74. On the basis of this and other evidence, police obtained a warrant to search petitioner's residence. *Id.*, at 75. The search revealed that a page in petitioner's phone book was turned down to the name and number of Patricia McDonough; the phone book was seized. *Ibid.* Petitioner was arrested, and a six-man line-up was held on March 19. McDonough identified petitioner as the man who had robbed her. *Id.*, at 70–71.

Petitioner was indicted in the Criminal Court of Baltimore for robbery. By pretrial motion, he sought to suppress "all fruits derived from the pen register" on the ground that police had failed to secure a warrant prior to its installation. Record 14; Tr. 54–56. The trial court denied the suppression motion, holding that the warrantless installation of the pen register did not violate the Fourth Amendment. *Id.*, at 63. Petitioner then waived a jury, and the case was submitted to the court on an agreed statement of facts. *Id.*, at 65–66. The pen register tape (evidencing the fact that a phone call had been made from petitioner's phone to McDonough's

phone) and the phone book seized in the search of petitioner's residence were admitted into evidence against him. *Id.*, at 74–76. Petitioner was convicted, *id.*, at 78, and was sentenced to six years. He appealed to the Maryland Court of Special Appeals, but the Court of Appeals of Maryland issued a writ of certiorari to the intermediate court in advance of its decision in order to consider whether the pen register evidence had been properly admitted at petitioner's trial. 283 Md. 156, 160, 389 A. 2d 858, 860 (1978).

The Court of Appeals affirmed the judgment of conviction, holding that "there is no constitutionally protected reasonable expectation of privacy in the numbers dialed into a telephone system and hence no search within the Fourth Amendment is implicated by the use of a pen register installed at the central offices of the telephone company." *Id.*, at 173, 389 A. 2d, at 867. Because there was no "search," the court concluded, no warrant was needed. Three judges dissented, expressing the view that individuals do have a legitimate expectation of privacy regarding the phone numbers they dial from their homes; that the installation of a pen register thus constitutes a "search"; and that, in the absence of exigent circumstances, the failure of police to secure a warrant mandated that the pen register evidence here be excluded. *Id.*, at 174, 178, 389 A. 2d, at 868, 870. Certiorari was granted in order to resolve indications of conflict in the decided cases as to the restrictions imposed by the Fourth Amendment on the use of pen registers.[3] — U. S. — (1978).

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[3] See *Application of the United States for an Order, Etc.*, 546 F. 2d 243, 245 (CA8 1976), cert. denied, 434 U. S. 1008 (1978); *Application of U. S. in Matter of Order, Etc.*, 538 F. 2d 956, 959–960 (CA2 1976), rev'd on other grounds *sub nom. United States* v. *New York Tel. Co.*, 434 U. S. 159 (1977); *United States* v. *Falcone*, 505 F. 2d 478, 482, and n. 21 (CA3 1974), cert. denied, 420 U. S. 955 (1975), *Hodge* v. *Mountain States Tel. & Tel. Co.*, 555 F. 2d 254, 256 (CA9 1977), *id.*, at 266 (concurring opinion), and *United States* v. *Clegg*, 509 F. 2d 605, 610 (CA5 1975). In previous decisions, this Court has not found it necessary to consider whether "pen

II

A

The Fourth Amendment guarantees "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." In determining whether a particular form of government-initiated electronic surveillance is a "search" within the meaning of the Fourth Amendment,[4] our lodestar is *Katz* v. *United States*, 389 U. S. 347 (1967). In *Katz*, Government agents had intercepted the contents of a telephone conversation by attaching an electronic listening device to the outside of a public phone booth. The Court rejected the argument that a "search" can occur only when there has been a "physical intrusion" into a "constitutionally protected area," noting that the Fourth Amendment "protects people, not places." *Id.*, at 351–353. Because the Government's monitoring of Katz' conversation "violated the privacy upon which he justifiably relied while using the telephone booth," the Court held that it "constituted a 'search and seizure' within the meaning of the Fourth Amendment." *Id.*, at 353.

Consistently with *Katz*, this Court uniformly has held that the application of the Fourth Amendment depends on whether the person invoking its protection can claim a "justifiable," a "reasonable," or a "legitimate expectation of privacy" that has been invaded by government action. *E. g.*, *Rakas* v.

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register surveillance [is] subject to the requirements of the Fourth Amendment." *United States* v. *New York Tel. Co.*, 434 U. S., at 165 n. 7. See *United States* v. *Giordano*, 416 U. S., at 554 n. 4 (opinion concurring in part and dissenting in part).

[4] In this case, the pen register was installed, and the numbers dialed were recorded, by the telephone company. Tr. 73–74. The telephone company, however, acted at police request. *Id.*, at 73, 75. In view of this, respondent appears to concede that the company is to be deemed an "agent" of the police for purposes of this case, so as to render the installation and use of the pen register "state action" under the Fourth and Fourteenth Amendments. We may assume that "state action" was present here,

Illinois, — U. S. —, —, and n. 12 (1978); *id.*, at —, — (concurring opinion); *id.*, at —, (dissenting opinion); *United States* v. *Chadwick*, 433 U. S. 1, 7 (1977); *United States* v. *Miller*, 425 U. S. 435, 442 (1976); *United States* v. *Dionisio*, 410 U. S. 1, 14 (1973); *Couch* v. *United States*, 409 U. S. 322, 335–336 (1973); *United States* v. *White*, 401 U. S. 745, 752 (1971); (plurality opinion); *Mancusi* v. *DeForte*, 392 U. S. 364, 368 (1968); *Terry* v. *Ohio*, 392 U. S. 1, 9 (1968). This inquiry, as Mr. Justice Harlan aptly noted in his *Katz* concurrence, embraces two discrete questions. The first is whether the individual, by this conduct, has "exhibited an actual (subjective) expectation of privacy," 389 U. S., at 361—whether, in the words of the *Katz* majority, the individual has shown that "he seeks to preserve [something] as private." *Id.*, at 351. The second question is whether the individual's subjective expectation of privacy is "one that society is prepared to recognize as 'reasonable,'" *id.*, at 361—whether, in the words of the *Katz* majority, the individual's expectation, viewed objectively, is "justifiabl[e]" under the circumstances. *Id.*, at 353. See *Rakas* v. *Illinois*, — U. S., at — n. 12, *id.*, at — (concurring opinion); *United States* v. *White*, 401 U. S., at 752 (plurality opinion).

B

In applying the *Katz* analysis to this case, it is important to begin by specifying precisely the nature of the state activity that is challenged. The activity here took the form of installing and using a pen register. Since the pen register was installed on telephone company property at the telephone company's central offices, petitioner obviously cannot claim that his "property" was invaded or that police intruded into a "constitutionally protected area." Petitioner's claim, rather, is that, notwithstanding the absence of a trespass, the State, as did the Government in *Katz*, infringed a "legitimate expectation of privacy" petitioner held. Yet a pen register differs significantly from the listening device employed in

Katz, for pen registers do not acquire the *contents* of communications. This Court recently noted:

> "Indeed, a law enforcement official could not even determine from the use of a pen register whether a communication existed. These devices do not hear sound. They disclose only the telephone numbers that have been dialed—a means of establishing communication. Neither the purport of any communication between the caller and the recipient of the call, their identities, nor whether the call was even completed is disclosed by pen registers." *United States* v. *New York Tel. Co.*, 434 U. S., at 167.

Given a pen register's limited capabilities, therefore, petitioner's argument that its installation and use constituted a "search" necessarily rests upon a claim that he had a "legitimate expectation of privacy" regarding the numbers he dialed on his phone.

This claim must be rejected. First, we doubt that people in general entertain any actual expectation of privacy in the numbers they dial. All telephone users realize that they must "convey" phone numbers to the telephone company, since it is through telephone company switching equipment that their calls are completed. All subscribers realize, moreover, that the phone company has facilities for making permanent records of the numbers they dial, for they see a list of their long-distance (toll) calls on their monthly bills. In fact, pen registers and similar devices are routinely used by telephone companies "for the purposes of checking billing operations, detecting fraud, and preventing violations of law." *United States* v. *New York Tel. Co.*, 434 U. S., at 174–175. Electronic equipment is used, not only to keep billing records of toll calls, but "to keep a record of all calls dialed from a telephone which is subject to a special rate structure." *Hodge* v. *Mountain States Tel. & Tel. Co.*, 555 F. 2d 254, 266 (CA9 1977) (concurring opinion). Pen registers are regularly employed "to determine whether a home phone is being used to

conduct a business, to check for a defective dial, or to check for overbilling." Note, The Legal Constraints upon the Use of the Pen Register as a Law Enforcement Tool, 60 Cornell L. Rev. 1028, 1029 (1975) (footnotes omitted). Although most people may be oblivious to a pen register's esoteric functions, they presumably have some awareness of one common use: to aid in the identification of persons making annoying or obscene calls. See, *e. g.*, *Von Lusch* v. *C & P Tel. Co.*, 457 F. Supp. 815, 816 (Md. 1978); Note, 60 Cornell L. Rev., at 1029–1030, n. 11; Claerhout, The Pen Register, 20 Drake L. Rev. 108, 110–111 (1979). Most phone books tell subscribers, on a page entitled "Consumer Information," that the company "can frequently help in identifying to the authorities the origin of unwelcome and troublesome calls." *E. g.*, Baltimore Telephone Directory 21 (1978); District of Columbia Telephone Directory 13 (1978). Telephone users, in sum, typically know that they must convey numerical information to the phone company; that the phone company has facilities for recording this information; and that the phone company does in fact record this information for a variety of legitimate business purposes. Although subjective expectations cannot be scientifically gauged, it is too much to believe that telephone subscribers, under these circumstances, harbor any general expectation that the numbers they dial will remain secret.

Petitioner argues, however, that, whatever the expectations of telephone users in general, he demonstrated an expectation of privacy by his own conduct here, since he "us[ed] the telephone *in his house* to the exclusion of all others." Brief for Petitioner 6 (emphasis added). But the site of the call is immaterial for purposes of analysis in this case. Although petitioner's conduct may have been calculated to keep the *contents* of his conversation private, his conduct was not and could not have been calculated to preserve the privacy of the number he dialed. Regardless of his location, petitioner had to convey that number to the telephone company in precisely

the same way if he wished to complete his call. The fact that he dialed the number on his home phone rather than on some other phone could make no conceivable difference, nor could any subscriber rationally think that it would.

Second, even if petitioner did harbor some subjective expectation that the phone numbers he dialed would remain private, this expectation is not "one that society is prepared to recognize as 'reasonable.'" This Court consistently has held that a person has no legitimate expectation of privacy in information he voluntarily turns over to third parties. *E. g.*, *United States* v. *Miller*, 425 U. S., at 442–444; *Couch* v. *United States*, 409 U. S., at 335–336; *United States* v. *White*, 401 U. S., at 752 (plurality opinion); *Hoffa* v. *United States*, 385 U. S. 293, 302 (1966); *Lopez* v. *United States*, 373 U. S. 427 (1963). In *Miller*, for example, the Court held that a bank depositor has no "legitimate 'expectation of privacy'" in financial information "voluntarily conveyed to . . . banks and exposed to their employees in the ordinary course of business." 425 U. S., at 442. The Court explained:

> "The depositor takes the risk, in revealing his affairs to another, that the information will be conveyed by that person to the Government. . . . This Court has held repeatedly that the Fourth Amendment does not prohibit the obtaining of information revealed to a third party and conveyed by him to Government authorities, even if the information is revealed on the assumption that it will be used only for a limited purpose and the confidence placed in the third party will not be betrayed." *Id.*, at 443.

Because the depositor "assumed the risk" of disclosure, the Court held that it would be unreasonable for him to expect his financial records to remain private.

This analysis dictates that petitioner can claim no legitimate expectation of privacy here. When he used his phone, petitioner voluntarily conveyed numerical information to the

telephone company and "exposed" that information to its equipment in the ordinary course of business. In so doing, petitioner assumed the risk that the company would reveal to police the numbers he dialed. The switching equipment that processed those numbers is merely the modern counterpart of the operator who, in an earlier day, personally completed calls for the subscriber. Petitioner concedes that if he had placed his calls through an operator, he could claim no legitimate expectation of privacy. Tr. of Oral Arg. 3–5, 11–12, 32. We are not inclined to hold that a different constitutional result is required because the telephone company has decided to automate.

Petitioner argues, however, that automatic switching equipment differs from a live operator in one pertinent respect. An operator, in theory at least, is capable of remembering every number that is conveyed to him by callers. Electronic equipment, by contrast, can "remember" only those numbers it is programmed to record, and telephone companies, in view of their present billing practices, usually do not record local calls. Since petitioner, in calling McDonough, was making a local call, his expectation of privacy as to her number, on this theory, would be "legitimate."

This argument does not withstand scrutiny. The fortuity of whether or not the phone company in fact elects to make a quasi-permanent record of a particular number dialed does not, in our view, make any constitutional differences. Regardless of the phone company's election, petitioner voluntarily conveyed to it information that it had facilities for recording and that it was free to record. In these circumstances, petitioner assumed the risk that the information would be divulged to police. Under petitioner's theory, Fourth Amendment protection would exist, or not, depending on how the telephone company chose to define local-dialing zones, and depending on how it chose to bill its customers for local calls. Calls placed across town, or dialed directly, would

be protected; calls placed across the river, or dialed with operator assistance, might not be. We are not inclined to make a crazy quilt of the Fourth Amendment, especially in circumstances where (as here) the pattern of protection would be dictated by billing practices of a private corporation.

We therefore conclude that petitioner in all probability entertained no actual expectation of privacy in the phone numbers he dialed, and that, even if he did, his expectation was not "legitimate." The installation and use of a pen register, consequently, was not a "search," and no warrant was required. The judgment of the Maryland Court of Appeals is affirmed.

It is so ordered.

MR. JUSTICE POWELL took no part in the consideration or decision of this case.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 24, 1979

Re: No. 78-5374 - Smith v. Maryland

Dear Harry:

Please join me.

Sincerely,

WR

Mr. Justice Blackmun

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 29, 1979

Re: 78-5374 - Smith v. State of Maryland

Dear Harry,

I agree.

Sincerely yours,

Mr. Justice Blackmun

Copies to the Conference

cmc

THE C. J.	W. J. B.	P. S.	B. R. W.	T. M.	H. A B.	L. F. P.	W. H. R.	J. P. S.
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Join HAB 6/14/79	Join TM 6/11/79	Typed Draft 6/13/79	I agree HAB 5/29/79	dissent typed Draft 6/8/79	1st draft 5/23/79 2nd draft	out ~~table~~ Agree	Join HAB 5/24/79	Join HAB 5/23/79
	Join PS 6/14/79	1st draft 6/14/79		2nd draft 6/12/79	5/25/79			
				78-5374 Smith v. Maryland				