US justices:'Get a warrant' to search cellphones (Update)

June 25 2014, by Mark Sherman

This April 29, 2014 file photo shows a Supreme Court visitor using his cellphone to take a photo of the court in Washington. A unanimous Supreme Court says police may not generally search the cellphones of people they arrest without first getting search warrants. The justices say cellphones are powerful devices unlike anything else police may find on someone they arrest. (AP Photo, File)

A unanimous U.S. Supreme Court ruled Wednesday that police generally may not search the cellphones of people they arrest without first getting search warrants in an emphatic defense of privacy in the digital age.

Cellphones are unlike anything else police may find on someone they arrest, Chief Justice John Roberts wrote for the court. They are "not just another technological convenience," he said, but ubiquitous, increasingly powerful computers that contain vast quantities of personal, sensitive information.

"With all they contain and all they may reveal, they hold for many Americans the privacies of life," Roberts declared. So the message to police about what they should do before rummaging through a cellphone's contents following an arrest is simple: "Get a warrant."

The chief justice acknowledged that barring searches would affect law enforcement, but he said: "Privacy comes at a cost."

What about other countries?

Canada's Supreme Court ruled last year, much as the U.S. justices did, that officers need a specific warrant to search a computer or a cellphone because the devices "give police access to an almost unlimited universe of information."

In Britain, however, warrantless searches of cellphones and other electronic devices are routine; London police stations are even equipped with special devices to suck data from the phones of arrestees as they're booked.

By ruling as it did, the U.S. court chose not to extend earlier decisions from the 1970s— when cellphone technology was not yet available—that allow police to empty a suspect's pockets and examine whatever they find to ensure officers' safety and prevent the destruction of evidence.

The Obama administration and the state of California, defending

cellphone searches, said the phones should have no greater protection from a search than anything else police find. But the defendants in the current cases, backed by civil libertarians, librarians and news media groups, argued that cellphones, especially smartphones, can store troves of sensitive personal information.

"By recognizing that the digital revolution has transformed our expectations of privacy, today's decision is itself revolutionary and will help to protect the privacy rights of all Americans," said American Civil Liberties Union legal director Steven Shapiro.

Under the U.S. Constitution's Fourth Amendment, police generally need a warrant before they can conduct a search. The warrant itself must be based on "probable cause," evidence that a crime has been committed.

In the cases decided Wednesday, one defendant carried a smartphone, while the other carried an older flip phone. The police looked through both without first getting search warrants.

Roberts said there's no comparison between cellphones and packages of cigarettes and other items that were at issue in the earlier cases.

A ride on horseback and a flight to the moon both "are ways of getting from point A to point B, but little else justifies lumping them together," he said.

Authorities concerned about the destruction of evidence can take steps to prevent the remote erasure of a phone's contents or the activation of encryption, Roberts said. The police still may seize the cellphone and turn it off or remove its battery. If they think that turning it off could trigger encryption when the phone is turned back on, police can leave the phone on and place it in a special Faraday bag that isolates the phone from radio waves, he said.

One exception to the warrant requirement left open by the decision is a case in which officers reasonably fear for their safety or the lives of others.

Justice Samuel Alito joined in the judgment, but he wrote separately to say he would prefer that elected lawmakers, not judges, decide current matters of privacy protection. Elected officials "are in a better position than we are to assess and respond to the changes that have already occurred and those that almost certainly will take place in the future," Alito said.

The two cases arose after arrests in San Diego and Boston.

In San Diego, police found indications of gang membership when they looked through defendant David Leon Riley's Samsung smartphone. Prosecutors used video and photographs found on the smartphone to persuade a jury to convict Riley of attempted murder and other charges. California courts rejected Riley's efforts to throw out the evidence and upheld the convictions.

The court ordered the California Supreme Court to take a new look at Riley's case.

In Boston, a federal appeals court ruled that police must have a warrant before searching arrestees' cellphones.

Police arrested Brima Wurie on suspicion of selling crack cocaine, checked the call log on his flip phone and used that information to determine where he lived. When they searched Wurie's home and had a warrant, they found crack, marijuana, a gun and ammunition. The evidence was enough to produce a conviction and a prison term of more than 20 years.

The appeals court ruled for Wurie, but left in place a drug conviction for selling cocaine near a school that did not depend on the tainted evidence. That conviction also carried a 20-year sentence. The administration appealed the court ruling because it wanted to preserve the option of warrantless searches following arrest.

The justices upheld that ruling.