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### **Physical Security and Legal Protection of Your Smartphone**

We have seen it in movies for years: devices will scan your hand, finger, retina, or face to access a computer. What was once science fiction is now science fact. Today, computers and mobile devices are integrating these security features into their products. While it may increase physical security, legal protections are not as solid. Courts have ruled that biometric data is not testimonial, and thus not protected by the Fifth Amendment of the US Constitution. Although it may be inconvenient using a passcode to unlock a device in combination with biometric security would be the best way to maintain legal protection.

By now, most people who have watched a police/legal drama have heard the words "You have the right to remain silent, anything you say or do can be used against you in a court of law." This is the beginning to the classic "Miranda Warning." The government cannot compel a person to testify against themselves. This principle is enshrined in the Fifth Amendment of the US Constitution.

How this would relate to passwords and biometric information needs clarification. For example, a case from Michigan ruled that where a subpoena ordered a suspect to provide his computer password, such a subpoena violated the Fifth Amendment protection against self-incrimination. The court found that requiring the accused to provide his password was tantamount to a "testimonial communication," divulging his mental thoughts and processes that could incriminate him.

A case out of Virginia also came to the same conclusion about using a password to unlock a phone. A fingerprint, however, was a different story. The court analogized the fingerprint to a key unlocking a door, which does not require a defendant to provide information from their mental thoughts and processes. Similar cases came out of California and Minnesota, both of which ruled that a person can be compelled to provide their fingerprint to unlock their phones.

The Law is not changing with technology. With so much of our personal lives stored in digital devices it is counter-intuitive that the Fifth Amendment protects one method of securing a device but not another. As devices shift to biometric security users need to be cognizant of the physical and legal security of their information. Therefore, until the judicial system resolves this conflict consider continuing to use a passcode to access your devices.