

C O N T E N T S	
	PAGE
1	
2	ORAL ARGUMENT OF
3	KENT L. RICHLAND, ESQ.
4	On behalf of the Petitioners
5	
6	ORAL ARGUMENT OF
7	NEAL K. KATYAL, ESQ.
8	On behalf of the United States,
9	as amicus curiae, supporting the Petitioners
10	
11	ORAL ARGUMENT OF
12	DIETER DAMMEIER, ESQ.
13	On behalf of the Respondents
14	
15	REBUTTAL ARGUMENT OF
16	KENT L. RICHLAND, ESQ.
17	On behalf of the Petitioners
18	
19	
20	
21	
22	
23	
24	
25	

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

P R O C E E D I N G S

(11:06 a.m.)

CHIEF JUSTICE ROBERTS: We will hear argument next in Case 08-1332, the City of Ontario v. Quon.

Mr. Richland.

ORAL ARGUMENT OF KENT L. RICHLAND

ON BEHALF OF THE PETITIONERS

MR. RICHLAND: Mr. Chief Justice, and may it please the Court:

Under the less restrictive constitutional standards applied when government acts as employer, as opposed to sovereign, there was no Fourth Amendment violation here.

First, Ontario Police Sergeant Jeff Quon had no reasonable expectation of privacy vis-à-vis the Ontario Police Department in text messages on his department-issued pager in light of the operational realities of his workplace, which included the explicit no privacy in text messages policy.

CHIEF JUSTICE ROBERTS: The written policy?

(Laughter.)

CHIEF JUSTICE ROBERTS: The whole -- the argument here, of course, is that that was modified by the instructions he got from the lieutenant. Do we

1 follow the written policy or the policy they allegedly
2 enforced in practice?

3 MR. RICHLAND: That is the argument,
4 Mr. Chief Justice. But, in fact, there was no
5 inconsistency between the no privacy in text messages
6 aspect of the written policy and the oral information
7 he was given.

8 First of all, the written policy itself was
9 broad enough to cover text messages. It stated, for
10 example, at Appendix 152, that it applied to city-owned
11 computers and all associated equipment. And again at
12 152: "City-owned computer equipment, computer
13 peripheral, city networks, the Internet, e-mail, or
14 other city-related computer services." And, finally, the
15 agreement to the policy was that it applied -- this is
16 at Appendix 156 -- to city-owned computers and related
17 equipment.

18 So certainly the written policy itself was
19 broad enough to cover text messaging pagers, but in
20 addition to that, nothing in the oral statements made by
21 Lieutenant Duke undermined the no-privacy aspect of the
22 written policy.

23 CHIEF JUSTICE ROBERTS: Well, we are dealing
24 with Mr. Quon's reasonable expectations, right?

25 MR. RICHLAND: Yes, yes.

1 CHIEF JUSTICE ROBERTS: And even with the
2 written policy, he has the instructions -- everybody
3 agrees -- you can use this pager for private
4 communications.

5 MR. RICHLAND: That's correct.

6 CHIEF JUSTICE ROBERTS: We're not going to
7 audit them. Right? That's what he said. He has to pay
8 for them. Right? Now, most things, if you're paying for
9 them, they're yours. And this -- it particularly covered
10 messages off-duty.

11 Now, can't you sort of put all those
12 together and say that it would be reasonable for him to
13 assume that private messages were his business? They
14 said he can do it. They said, you've got to pay for
15 it. He used it off duty. They said they're not going
16 to audit it.

17 MR. RICHLAND: Not when he was told at the
18 same time that these text messages were considered
19 e-mail and could be audited, and that they were
20 considered public records and could be audited at any
21 time; that is, it has to do with a different aspect of
22 what the policy -- the oral policy --

23 JUSTICE GINSBURG: In addition to -- that
24 was said at the meeting -- and Lieutenant Duke, who was
25 the same one who later says: I'm not going to monitor

1 as long as you pay the difference. There was the
2 statement at the meeting by that same person. Wasn't
3 there something in writing by the police chief to follow
4 up after that meeting?

5 MR. RICHLAND: Yes, there was,
6 Justice Ginsburg. There was a memo that was sent that
7 memorialized the statements at the meeting, that
8 specifically stated that the text messages were treated
9 as e-mail under the written policy.

10 CHIEF JUSTICE ROBERTS: Let me ask you --

11 JUSTICE SOTOMAYOR: Counsel --

12 CHIEF JUSTICE ROBERTS: Let me ask you to
13 put the written policy aside. Hypothetical case: There's
14 no written policy. Would he have a reasonable
15 expectation in the privacy of his personal e-mail, text
16 messages, in that case?

17 MR. RICHLAND: Not --

18 CHIEF JUSTICE ROBERTS: In other words,
19 all we know is the list that I went through earlier.

20 MR. RICHLAND: Yes. Yes, Mr. Chief Justice.
21 Assuming all the other factors in this case were
22 present --

23 CHIEF JUSTICE ROBERTS: Yes.

24 MR. RICHLAND: That is, he is using his
25 department-issued pager; he is a police officer and

1 indeed a member of the high-profile SWAT team of the
2 police department. He should be aware just by virtue of
3 that fact that there is going to be litigation involving
4 incidents that the SWAT team gets involved in where there
5 will be requests for the communications that are made on
6 that official department-issued pager.

7 And, in addition, he should be aware of the
8 fact -- and this is something that the dissenters to
9 denial of en banc said below. He should be aware that
10 there may be inquiries from boards of the police to
11 determine whether the conduct of the police in a particular
12 incident is appropriate.

13 JUSTICE SCALIA: Mr. Richland, a little
14 earlier you referred us to page 152 and 156 of --

15 MR. RICHLAND: Of the appendix to the
16 petition.

17 JUSTICE SCALIA: Oh, the appendix to the
18 petition.

19 MR. RICHLAND: Yes, and that's the policy.
20 That is the written policy, Justice Scalia. I'm sorry
21 for the confusion.

22 CHIEF JUSTICE ROBERTS: Well, that's the
23 written policy.

24 MR. RICHLAND: That is the written policy,
25 and the --

1 CHIEF JUSTICE ROBERTS: But the policy
2 itself, from the point of view of Officer Quon, is a
3 little bit more complicated than that.

4 MR. RICHLAND: Well, of course, what the --
5 what Officer Quon's point of view is must also be
6 tempered by what we are reasonably going to accept as a
7 society of his understanding of the circumstances.

8 JUSTICE SOTOMAYOR: Counsel --

9 CHIEF JUSTICE ROBERTS: You would agree, I
10 think, that if the SCA, the Stored Communications Act --

11 MR. RICHLAND: Yes.

12 CHIEF JUSTICE ROBERTS: If that made it illegal
13 to disclose these e-mails, then he would certainly be correct
14 that he has a reasonable expectation of privacy; isn't that
15 right?

16 MR. RICHLAND: No, Mr. Chief Justice. We
17 would not agree with that.

18 CHIEF JUSTICE ROBERTS: It's not reasonable
19 to assume that people are going to follow the law?

20 MR. RICHLAND: Well, for several reasons.
21 Number one, this Court has repeatedly stated that the
22 mere fact that something is contrary to the law does not
23 in itself permit a reasonable expectation of privacy.
24 Just two terms ago, in Virginia v. Moore, this Court
25 said precisely that. And of course it said it earlier

1 in California v. Greenwood, and in a number of other
2 cases -- Oliver v. United States.

3 Because the effect of that, of course, would
4 mean that we would be constitutionalizing every positive
5 law that might be enacted by a State or the
6 Federal legislature.

7 JUSTICE KENNEDY: Well, on that point, do we
8 take it as the law of the case or as a given that it was
9 illegal for I think Arch to turn over the transcripts to
10 the police department? What do we do with that part of
11 the case?

12 MR. RICHLAND: Justice Kennedy, I don't
13 believe it is law of the case that is binding on this
14 Court, since this Court is a higher court. Although it
15 is true that this Court denied certiorari on that issue,
16 I don't believe it is bound by the Ninth Circuit
17 determination of that, and in fact it is our contention
18 that that was incorrectly decided.

19 JUSTICE KENNEDY: On remand -- has there been
20 a final judgment issued as to Arch, or is that just
21 being held --

22 MR. RICHLAND: I don't believe so,
23 Justice Kennedy. I believe that everything has been
24 stayed pending the determination by this Court.

25 JUSTICE SOTOMAYOR: Counsel, let's assume

1 that in this police department, everyone knew, the
2 supervisors and everyone else, that the police
3 department people spoke to their girlfriends at night.

4 MR. RICHLAND: Yes, Justice Sotomayor.

5 JUSTICE SOTOMAYOR: And one of the chiefs,
6 out of salacious interest, decides: I'm going to just
7 go in and get those texts, those messages, because I
8 just have a prurient interest. Does that officer have
9 any expectation of privacy that his boss won't just
10 listen in out of prurient interest?

11 MR. RICHLAND: Justice Sotomayor, as to the
12 first aspect, the question of reasonable expectation of
13 privacy, the motive should have no impact. The motive
14 of looking should have no impact. The question of
15 reasonable expectation of privacy must be analyzed
16 according to the relationship between the officer and
17 his -- and his employer.

18 JUSTICE SOTOMAYOR: But if in fact -- and
19 whether we agree with this conclusion or not, we accept
20 the lower court's views that there was an expectation
21 that the chiefs were not going to read these things,
22 some expectation of privacy --

23 MR. RICHLAND: Yes.

24 JUSTICE SOTOMAYOR: -- the limits of it have
25 to be limited for all of the reasons you've said, doesn't

1 this case begin and end on whether or not what the jury
2 found is reasonable grounds for what the city did?

3 MR. RICHLAND: I think that what this case
4 begins and ends with, if we assume that there was a
5 reasonable expectation of privacy, is under the
6 plurality opinion in O'Connor: Whether the search
7 itself was reasonable. And the jury did, of course,
8 make a determination as to the purpose of the search.

9 JUSTICE SCALIA: I guess we don't decide
10 our -- our Fourth Amendment privacy cases on the basis
11 of whether there -- there was an absolute guarantee of
12 privacy from everybody. I think -- I think those cases
13 say that if you think it can be made public by anybody,
14 you don't -- you don't really have a right of privacy.

15 So when the -- when the filthy-minded police
16 chief listens in, it's a very bad thing, but it's not --
17 it's not offending your right of privacy. You expected
18 somebody else could listen in, if not him.

19 MR. RICHLAND: I think that's correct,
20 Justice Scalia.

21 JUSTICE SCALIA: I think it is.

22 MR. RICHLAND: And I think the reason why
23 you must have the two-step analysis in a case of this
24 sort -- that is, first look at the question as to
25 whether there's a reasonable expectation of privacy,

1 and then determine, if there was, whether the search was
2 reasonable -- is precisely for the reason that, without
3 that, what we will have in every case is the claim that
4 there was a salacious reason, that that was the reason.
5 And we'll be litigating every one of those cases --

6 JUSTICE GINSBURG: Then, according to what
7 you just said, the jury determination was superfluous.
8 If there was no reasonable expectation of privacy
9 because the officers were told this is just -- we
10 treat this just like e-mails, it can be monitored, it
11 can be made public, then there would be no reasonable
12 expectation of privacy and there would be no question to
13 go to the jury.

14 MR. RICHLAND: That's correct,
15 Justice Ginsburg. And it is our position that this
16 should never have gone to the jury, that summary
17 judgment should have been granted in favor of the
18 Ontario Police Department.

19 JUSTICE KENNEDY: So you have two arguments:
20 One, that it's -- there's no reasonable expectation of
21 privacy; even if there were, that this was a reasonable
22 search.

23 MR. RICHLAND: That's correct.

24 JUSTICE SCALIA: Is reasonable expectation
25 of privacy a judge question or a jury question?

1 MR. RICHLAND: Well, if there is a conflict
2 in the facts, I presume the jury must resolve those --
3 that factual conflict. But in this case, I don't
4 believe there is a conflict in the facts, and, therefore,
5 it is a judge question.

6 CHIEF JUSTICE ROBERTS: Did your client
7 treat on-duty text messages different from off-duty text
8 messages?

9 MR. RICHLAND: It did, once there was an
10 initial determination made as to the --

11 CHIEF JUSTICE ROBERTS: Why did it do that?

12 MR. RICHLAND: Excuse me. I'm sorry.

13 CHIEF JUSTICE ROBERTS: Why did it treat
14 them differently? Under your theory, they're all the
15 same -- no expectation of privacy.

16 MR. RICHLAND: It treated them differently
17 out of -- because there were two aspects to the case.
18 One aspect was the initial determination that Chief
19 Sharp ordered to say: I just want to know, is our
20 character limit efficacious here, or do we need to have
21 a higher character limit? And for that purpose, they
22 needed to just look at all of them. And they did; they
23 looked at all of the text messages.

24 But then when they saw that some of them may
25 have involved violations of department regulations, then

1 it was sent to Internal Affairs, and they redacted the
2 off-duty messages because they were --

3 JUSTICE KENNEDY: Is that something like the
4 plain view argument? In search and -- search and --

5 MR. RICHLAND: I suppose.

6 JUSTICE KENNEDY: Well, I'm serious. In
7 other words, there is, under your view --

8 MR. RICHLAND: Yes.

9 JUSTICE KENNEDY: -- legitimate grounds to
10 look at the messages, and then once they see it, they
11 don't have to ignore it.

12 MR. RICHLAND: I think that's correct,
13 Justice Kennedy.

14 CHIEF JUSTICE ROBERTS: Well, why did -- I'm
15 sorry. I still don't understand. It redacted them,
16 right?

17 MR. RICHLAND: Redacted because the inquiry
18 -- the second stage of the inquiry in Internal Affairs --

19 CHIEF JUSTICE ROBERTS: Yes.

20 MR. RICHLAND: -- was simply to determine how
21 much time was being spent on duty sending personal messages.

22 CHIEF JUSTICE ROBERTS: Right.

23 MR. RICHLAND: So the Internal Affairs
24 Department said: We don't need to look at the off-duty
25 messages. We're going to redact them. Why get into all

1 of that? We don't have to look.

2 The department was pretty scrupulous. And I
3 think that's part of what makes the entire approach that
4 they took to this reasonable. It makes the search
5 aspect of the case reasonable. And I think it's
6 important, in that regard, to look at the nature --

7 JUSTICE SCALIA: Excuse me. You said they
8 did get to the off-duty text messaging later?

9 MR. RICHLAND: No, it was the other way
10 around. They looked at the on-duty text messaging at
11 the later stage, at the Internal Affairs stage. But
12 they looked at all of the text messages when the only
13 purpose for the inquiry was to determine how many of the
14 text messages in general are job-related and how many
15 were personal? Because the question was: Do we need to
16 raise the character limit --

17 CHIEF JUSTICE ROBERTS: Well, you don't have
18 to look at the messages to determine that with respect
19 to the off-duty messages, right?

20 MR. RICHLAND: Well -- well, you did,
21 because of the fact, Mr. Chief Justice, that there were
22 job-related communications even while there was
23 off-duty. These officers were SWAT team officers. They
24 were on duty, as Sergeant Quon said, 24/7. That was one
25 of the reasons why they had the text messaging pagers.

1 JUSTICE ALITO: If someone wanted to send a
2 message to one of these pagers, what sort of a device
3 would you need? Do you need to have another pager, or
4 can you -- could you send a message to one of these
5 devices from some other type of device?

6 MR. RICHLAND: No, there were messages that
7 were sent from various other devices. Is the question
8 whether that could be physically done, electronically
9 done? Because, yes, clearly that was --

10 JUSTICE ALITO: Yes. What other type of
11 device could you use to send a message to one of these
12 pagers?

13 MR. RICHLAND: It -- oh. I'm not certain
14 if it was something other than another text messaging
15 pager. It did appear that there were some e-mail
16 entries in the transcripts themselves, which suggested
17 that there might have been a way to communicate to them
18 with e-mail, but that's just -- that's all in the record
19 that suggests that.

20 JUSTICE SCALIA: You know, if they were
21 on duty 24/7, there weren't any off-duty messages, were
22 there?

23 (Laughter.)

24 MR. RICHLAND: Well, I may have misspoke.
25 They were on call 24/7. They were the SWAT team, and

1 they had to respond to emergencies.

2 JUSTICE GINSBURG: If we take it that the
3 Stored Communications Act does say that the provider may
4 not give out the transcripts, if we take that as given,
5 then how can the department lawfully use the
6 transcripts?

7 MR. RICHLAND: Well, Justice Ginsburg, first
8 of all, there was no -- there is no current claim that
9 anything that the department did with respect to the
10 Stored Communications Act was unlawful. So it may be
11 that the other entity, Arch Wireless, violated the
12 Stored Communications Act, but that would not preclude
13 the department -- which was, after all, the subscriber
14 -- from requesting to see what, in fact, the transcripts
15 disclosed.

16 But in addition to that, there is also the
17 fact that, as I said before, a reasonable expectation of
18 privacy couldn't be based simply on the fact that there
19 was a statute, and particularly not a statute like the
20 Stored Communications Act, because that's a statute that's
21 extremely, extremely technical. And there is a --
22 one has to determine whether an entity was working
23 either as an electronic communications service or a
24 remote computing service, and so on. Courts are all
25 over the board on this. As this Court noted in United

1 States v. Payner, a complicated law like that simply
2 cannot be the basis for a reasonable expectation of
3 privacy.

4 And if I may reserve the rest of my time,
5 thank you.

6 CHIEF JUSTICE ROBERTS: Certainly, counsel.
7 Mr. Katyal.

8 ORAL ARGUMENT OF NEAL K. KATYAL,
9 ON BEHALF OF THE UNITED STATES, AS AMICUS CURIAE,
10 SUPPORTING THE PETITIONERS

11 MR. KATYAL: Thank you, Mr. Chief Justice,
12 and may it please the Court:

13 Millions of employees today use technologies
14 of their -- of their employers under policies
15 established by those employers. When a government
16 employer has a no-privacy policy in place that governs
17 the use of those technologies, ad hoc statements by a
18 non-policy member cannot create a reasonable expectation
19 of privacy. Put most simply, the computer help desk
20 cannot supplant the chief's desk. That simple, clear
21 rule should have decided this case.

22 Instead, the Ninth Circuit found that the
23 1999 policy applied to pagers, but then concluded that
24 that 1999 policy was informally modified years later.
25 And that decision should be reversed. It disregards

1 this Court's repeated holdings, including 2 years ago in
2 the Chief Justice's opinion in Engquist v. Oregon about
3 the greater amount of leeway that the government has
4 when it acts as an employer. And it also is not
5 consistent with the plurality opinion in O'Connor, which
6 observed that when the government adopts a policy that
7 its employees lack privacy, no reasonable expectation of
8 privacy exists.

9 JUSTICE KENNEDY: Let me ask you this:
10 Suppose the department asks for opinion of legal
11 counsel whether or not transmittal of the transcripts by
12 Arch to the department was a violation of the Act, and
13 the counsel said: This was a violation of the Act; they
14 had no right to send them to you. Would the department
15 then still have had a right to look at the transcripts?

16 MR. KATYAL: So the question is if the
17 Stored Communications Act is violated?

18 JUSTICE KENNEDY: Yes. Yes.

19 MR. KATYAL: We don't think the Stored
20 Communications Act was --

21 JUSTICE KENNEDY: No, but -- no, my
22 hypothetical is that the -- that there is a legal
23 counsel's opinion that this was in violation of the Act,
24 and let's say the district court said it is in violation
25 of the Act. Let's say we say it's in violation of the

1 Act. Is that the end of case? The department cannot
2 look at the transcripts?

3 MR. KATYAL: Oh, absolutely not. I mean, I
4 think this Court has repeatedly said that -- that
5 various privacy laws don't determine the scope of the
6 Fourth Amendment. I think it said so most clearly in
7 California v. Greenwood. And I think that's for a very
8 simple reason, that things like the Stored
9 Communications Act, Justice Kennedy, the Electronic
10 Communications Privacy Act, came about --

11 JUSTICE KENNEDY: Well, California v.
12 Greenwood was a question of -- of a Fourth Amendment
13 standard that had to be nationwide. So you say it's the
14 same -- same thing here?

15 MR. KATYAL: I -- I do think it's the same,
16 and for this simple reason, that when you have a
17 nationwide standard or a State standard, it's to fill
18 the gap, whatever isn't necessarily protected by the
19 Fourth Amendment. And here --

20 JUSTICE KENNEDY: Well, but Greenwood was in
21 the -- in the context of the exclusionary rule in
22 criminal proceedings. I certainly think that States --
23 at least we could make the reasonable argument that
24 States can have different policies with respect to their
25 employees, that have to be respected.

1 MR. KATYAL: Absolutely, Justice Kennedy. I
2 don't disagree with that. I think the only question is,
3 if the -- if I understand your question it's, does a
4 Federal statute about privacy somehow matter to the
5 Fourth Amendment analysis about reasonable expectations
6 of privacy? And there our contention is, no; it's
7 precisely because Congress enacted the Stored
8 Communications Act to fill gaps in Fourth Amendment law.
9 That -- that's why it's enacted.

10 And for -- for this Court to then use that
11 very Act to be the template on which reasonable
12 expectations of privacy may spring I think would be a
13 very -- it would be a novel proposition. Nor should --

14 JUSTICE ALITO: Well, that's -- that's a
15 little bit puzzling because there are -- electronic
16 communications are stored all over the place in -- and
17 there isn't a history -- these are -- these are
18 relatively new. There isn't a well-established
19 understanding about what is private and what isn't
20 private. It's a little different from putting garbage
21 out in front of your house, which has happened for a
22 long time.

23 If -- if statutes governing the privacy of
24 that information don't have any bearing on reasonable
25 expectation of privacy under the Fourth Amendment, it's

1 some -- I -- I'm at something of a loss to figure out
2 how to determine whether there is a reasonable
3 expectation of privacy regarding any of those things.

4 MR. KATYAL: Well, Justice Alito, I do think
5 that the underlying premise of your question is one with
6 which we entirely agree. These are technologies that
7 are rapidly in flux, in which we don't have intuitive
8 understandings the way we do about, say, trash and so
9 on. And it's precisely for that reason I think the
10 Court should be very careful to constitutionalize and
11 generate Fourth Amendment rules in this area at the
12 first instance.

13 To do so I think really does freeze into --
14 into -- into place something that the legislature can't
15 then fix, going to Justice Kennedy's opinion in, for
16 example, *Murray v. Giarratano*, in which he said that
17 constitutionalizing in that area -- constitutionalizing
18 may pretermit legislative solutions.

19 Now, here the Stored Communications Act is
20 not violated under any way, shape, or form. The Stored
21 Communications Act has two different provisions in it,
22 one having to do with remote -- remote computing
23 services, RCSs. That's when an entity offers storage
24 facilities. And the other is for an electronic
25 communications service. That is essentially transmission

1 of messages from point to point.

2 CHIEF JUSTICE ROBERTS: Your point that you
3 made just a moment ago, that we don't want to freeze into
4 place the constitutional requirements with respect to
5 new technology, I wonder if it cuts the other way. We're
6 dealing with an amendment that looks to whether
7 something is reasonable. And I think it might be the
8 better course to say that the Constitution applies, but
9 we're going to be more flexible in determining what's
10 reasonable because they are dealing with evolving
11 technology.

12 MR. KATYAL: Well, I think that the -- the
13 best way -- I think the most -- the easiest way for the
14 Court to resolve this is to simply say that when we are
15 dealing with what is reasonable, we look to the policy.
16 And here there's a policy by the employer, it says that
17 computer-associated -- computer-related equipment and
18 others, there's no expectation of privacy. You have a
19 person who is told that repeatedly.

20 CHIEF JUSTICE ROBERTS: Well, but that puts
21 a lot of weight -- I mean, there are some things where we
22 don't bind them. You know, you get the usual parking
23 garage thing that has got all this small print on the
24 back. We -- we don't say that you're bound by that,
25 because nobody reads it.

1 But in here, I just don't know. I just
2 don't know how you tell what's reasonable -- I suspect
3 it might change with how old people are and how
4 comfortable they are with the technology -- when you have
5 all these different -- different factors.

6 You know, they're told you can use it for
7 private; you've got to pay for it. I think if I pay for
8 it, it's mine, and it's not the employer's.

9 MR. KATYAL: Well, I think the clearest way,
10 Mr. Chief Justice, to decide what is reasonable and what
11 isn't is actually the terms of the policy. And it seems
12 to me very little is more unreasonable than expecting
13 a right to privacy after you've been told in a
14 policy you have no privacy.

15 JUSTICE SCALIA: Suppose we find a right of
16 privacy. Is that the end of the case? I mean, wouldn't
17 you also -- in order to sustain this lawsuit, wouldn't
18 you also have to find that it was an unreasonable --

19 MR. KATYAL: Absolutely. There are two
20 arrows in the city's quiver, and I think they're right
21 as to both of them. But --

22 JUSTICE SCALIA: What's the government's
23 position on the unreasonableness of the search?

24 MR. KATYAL: The government's position is
25 that the Ninth Circuit just from the get-go got the

1 standard wrong by citing -- by using a Schowengerdt test
2 which was, was this -- was this search the least
3 restrictive alternative? And we think this Court has
4 repeatedly said that's the wrong way of thinking about
5 it, that that puts judges in the position of
6 second-guessing searches on the ground, that they're
7 not really fully -- fully equipped to do so.

8 So I do think that is a possible way to
9 resolve this, Justice Scalia, but --

10 JUSTICE SCALIA: Maybe an easier way, huh?

11 MR. KATYAL: Well, I don't know that it's
12 easier, in the following sense: I think that thousands
13 of employers across the country rely on these policies
14 and millions of employees. And the Ninth Circuit's
15 decision puts that reliance in some jeopardy, because it
16 said that you can have an official policy and it can be
17 taken back by what some ad hoc subordinate says. And
18 that is, I think, a very destructive notion to the idea
19 of reliance on these policies and setting --

20 CHIEF JUSTICE ROBERTS: So, your -- your
21 position would require people basically to have two of
22 these things with them, two whatever they are,
23 text messenger or the BlackBerries or whatever, right?
24 Because assuming they're going to get personal things,
25 you know, some emergency at home, they're also going to

1 get work things --

2 MR. KATYAL: To the -- under this policy,
3 yes. You might have an employer that sets a different
4 policy and allows for some de minimis use and a zone of
5 privacy in that use. You can have a variety of
6 different things. But what I think would be dangerous
7 is to have a blanket rule that constitutionalizes and
8 says you always have reasonable expectations of privacy
9 in this technology. The result may be,
10 Mr. Chief Justice, that employers then won't give that
11 technology at all to their employees and -- and
12 eliminate even that de minimis use.

13 Mr. Chief Justice, you had also asked before
14 about the standpoint of Quon in -- in evaluating
15 the reasonableness of the search -- of the search in his
16 perspective of the policy. We think that is the wrong
17 way of looking at it. Instead, we think the proper test
18 is the written policy, what it says, and that is the
19 simplest way, I think, to provided administrability to
20 the lower courts. They can simply say was this policy
21 in existence, and not get into those questions of is it
22 like a parking ticket, did I flip through it too
23 quickly, did I understand that the policy and the like.

24 JUSTICE SOTOMAYOR: You want to -- you want
25 to -- you want to undo O'Connor's operational realities

1 of the workplace and say the minute you issued a written
2 policy that renders all searches okay, even if the
3 operational realities are different?

4 MR. KATYAL: Not at all, Justice Sotomayor.
5 I take it the language about operational realities in
6 the workplace, what is right next to it is looking to
7 whether or not there are regulations in place, and here
8 a policy is a regulation. And so --

9 JUSTICE SOTOMAYOR: You may have an argument
10 that the nature of the policy here and all of the
11 activities related to it don't prove an operational
12 reality of privacy, but I don't know why -- you want a
13 flat rule that says once you have a written policy,
14 there's no expectation of privacy.

15 MR. KATYAL: And I think that is -- that is
16 what O'Connor says with respect to the -- as long as the
17 policy is in place, that -- that's what O'Connor
18 permits.

19 CHIEF JUSTICE ROBERTS: Thank you, counsel.
20 Mr. Dammeier.

21 ORAL ARGUMENT OF DIETER DAMMEIER

22 ON BEHALF OF THE RESPONDENTS

23 MR. DAMMEIER: Thank you, Mr. Chief Justice,
24 and may it please the Court:

25 I think an underlying fact that we might be

1 skipping over is -- is -- and both the lower courts
2 recognize this -- that the computer policy that the
3 department had didn't apply to the pagers on its own.
4 It -- it only came into play after Lieutenant Duke
5 modified that policy and told people at the -- at the
6 meeting that was referred to earlier that the pagers are
7 now going to be applying with -- with this policy.
8 It -- it --

9 JUSTICE GINSBURG: Why is -- why is that so?
10 I mean, it did say associated equipment. And -- and if
11 an employee is told now e-mails aren't private, so we're
12 warning you, we can monitor them, wouldn't such an
13 employee expect the same thing to apply to the pager?

14 MR. DAMMEIER: Well, the policy itself has
15 two components to it. One is, don't use our equipment,
16 all associated equipment for personal business.

17 The other part of that policy deals with the
18 no privacy, and it informs the people there could be
19 monitoring. And specifically on the acknowledgment form
20 of that policy, which is at Appendix 156 of the
21 petition, it specifically says the city will
22 periodically monitor e-mail, Internet use, and computer
23 usage.

24 And -- and, again, I think this is why the --
25 both lower courts came to the conclusion that the

1 computer policy on its own wasn't in play until
2 Lieutenant Duke announced that, hey, now the pagers are
3 going -- are going to be in play with this computer
4 policy. This is the same Lieutenant Duke --

5 JUSTICE GINSBURG: But my question is, an
6 employee reads this policy and says, oh, my e-mails are
7 going to be subject to being monitored --

8 MR. DAMMEIER: Sure.

9 JUSTICE GINSBURG: Wouldn't that employee
10 expect that the policy would carry over to pagers? I mean,
11 would -- when you think of what's the reason why they want
12 to look at the e-mails, wouldn't the same reason apply?

13 MR. DAMMEIER: Well, I'm sure the same
14 reasons could apply, but the -- the city is the one that
15 writes the rules here. The -- if they want to make it
16 clear on what it applies to, it certainly should be on
17 them to write them clear so the employee understands.

18 CHIEF JUSTICE ROBERTS: Maybe -- maybe
19 everybody else knows this, but what is the difference
20 between a pager and e-mail?

21 MR. DAMMEIER: Sure. The e-mail, looking at
22 the computer policy -- that goes through the city's
23 computer, it goes through the city's server, it goes
24 through all the equipment that -- that has -- that the
25 city can easily monitor. Here the pagers are a separate

1 device that goes home with you, that travels with you,
2 that you can use on duty, off duty, and --

3 CHIEF JUSTICE ROBERTS: You can do that with
4 e-mails.

5 MR. DAMMEIER: Certainly, certainly. But in
6 this -- in this -- in this instance with the pagers, it went
7 through no city equipment; it went through Arch Wireless
8 and then was transmitted to another -- another person.

9 So, again, to Duke -- Duke is the one that
10 said: Hey, this -- this comes into play. But
11 Lieutenant Duke is also the one that gave the privacy
12 guarantee to the SWAT team members and said: As long as
13 you pay the overages, we're not going to look at your
14 pagers; we're not going to look at the messages. So if
15 -- if you couple both of those modifications, both by
16 the same lieutenant -- and he wasn't just some
17 subordinate; he was the lieutenant in charge of the
18 administrative bureau; he was the administrative bureau
19 commander.

20 JUSTICE GINSBURG: I thought that he said --
21 he was saying: But as far as billing is concerned, I'm
22 not going to look at these; if you use more than 25,000
23 characters, you pay the extra, and that will be the end
24 of it. If you contest that, then I'll look to see
25 whether those in excess of 25,000 characters were for

1 work purposes or private purposes.

2 And so he's talking about the billing. He
3 hasn't retracted what was said at the meeting about -- that
4 these text messages are subject to audit.

5 MR. DAMMEIER: This -- this is what Sergeant
6 Quon testified to, that he attributed to Lieutenant
7 Duke: If you don't want us to read it, pay the overage
8 fee.

9 JUSTICE BREYER: But what's wrong with his
10 deciding: I don't like to do this anymore? I don't
11 want to collect all this money; it's too complicated;
12 and so I don't know how many of these messages are
13 related to work and how many they are just mucking
14 around prying into each other's business.

15 MR. DAMMEIER: He can certainly --

16 JUSTICE BREYER: So I would like to know, so
17 therefore I'm going to look and see. Now, what's
18 unreasonable about that?

19 MR. DAMMEIER: Well, he certainly could say
20 I don't want to do this anymore, and he could --

21 JUSTICE BREYER: Oh, no.

22 MR. DAMMEIER: And he could tell everybody.

23 JUSTICE BREYER: I'm saying what's
24 -- the city owns the pager. It's a pager used for work.
25 They are giving a privilege to people if they want to

1 use it off work. It seems to be involving a big amount
2 of collection, and so what he wants to do is he wants to
3 see how much of this is being used for work and how much
4 is of this not being used for work.

5 My question, which I just repeated, is why
6 is that an unreasonable thing?

7 MR. DAMMEIER: I don't think that request is
8 unreasonable, Your Honor.

9 JUSTICE BREYER: Fine. And then if that's
10 not unreasonable, why is what went on here that is
11 any different?

12 MR. DAMMEIER: Well, here the jury -- the
13 only fact that was determined by the jury was the reason
14 for the search. And that's found at the appendix to the
15 petition page 119. This is the only finding that the
16 jury made as to the purpose of the search: To determine
17 the efficacy of the existing character limits to ensure
18 that officers were not being required to pay for the
19 work-related expenses.

20 JUSTICE BREYER: How does that differ from
21 what I just said?

22 MR. DAMMEIER: Well, it -- it comes into
23 play on -- on the scope of the search. Again --

24 JUSTICE BREYER: No, I understand. I thought
25 it's just a more -- a few more words to say just what I

1 said. That they wanted to look into this because they
2 are tired about collecting so much money.

3 It's the third time I've said the same
4 thing; probably it's my fault I'm not being clear. But
5 it looked as if they wanted to know how many are being
6 sent for work purposes, how many for private purposes
7 including prying into people's business, which wasn't
8 too desirable, and -- and -- so that they could get
9 the -- the charges right.

10 Now, that sounds like what the jury said they
11 were doing, too. And my question was -- I don't see
12 anything, quite honestly, unreasonable about that, where
13 you're the employer, where it's a SWAT team, where --
14 where -- where you're paying for this in the first
15 place. So the reason I ask it is I would like you
16 clearly to explain what's unreasonable about it.

17 MR. DAMMEIER: The scope of the search was
18 unreasonable.

19 JUSTICE BREYER: That's the conclusion. Now,
20 what's your reason?

21 MR. DAMMEIER: Under -- under -- looking at
22 O'Connor, you have to -- you have to look to make sure
23 that the search is not excessively intrusive. Here,
24 what they did was they took all the messages and started
25 reading them. Given the purpose, the limited purpose

1 that was found by the jury for the search, they didn't
2 need to do that.

3 JUSTICE BREYER: Well, explain that one to
4 me.

5 MR. DAMMEIER: They --

6 JUSTICE BREYER: Being naive about this, if
7 I had a -- like, 20, 30,000 characters in 1,800 messages
8 and I wanted to know which are personal and which are
9 work-related, a good way to get at least a good first
10 cut would be to read them.

11 (Laughter.)

12 JUSTICE BREYER: Okay? So I start off
13 thinking that seems to be reasonable to me. That's what
14 I would do.

15 MR. DAMMEIER: Well, that's certainly one --

16 JUSTICE BREYER: So all right. Now you tell
17 me why that isn't reasonable.

18 MR. DAMMEIER: That's one of the ways they
19 could have done it. They could have got -- they could
20 have got consent from the officers first to do it. They
21 could have had the officers themselves count the
22 messages. After all, the officers were the ones that
23 were paying for the overages.

24 JUSTICE BREYER: All right. But the
25 officers might say: I don't want you to read these

1 messages because they happen to be about the sexual
2 activity of some of my coworkers and their wives and me,
3 which happened to be the case here.

4 MR. DAMMEIER: Right.

5 JUSTICE BREYER: So I guess if you had asked
6 for consent, the officer would have said no.

7 (Laughter.)

8 JUSTICE BREYER: Now, he says, I still want to
9 know. I will be repeating it. All right. So what -- that
10 didn't sound very practical. What's the other way?

11 MR. DAMMEIER: Well, they could have -- they
12 could have had the officers themselves count the
13 messages.

14 JUSTICE BREYER: Well, the officer is going
15 to say, hey, these are all big -- work-related. I'll
16 tell you that. I only had two.

17 MR. DAMMEIER: Well --

18 (Laughter.)

19 JUSTICE BREYER: Okay. What's a third way?

20 MR. DAMMEIER: Okay. They -- the lieutenant
21 could have said, hey, we're going to stop this practice
22 that I started, and from this month forward make sure
23 all you do is business-related. No more --

24 JUSTICE BREYER: That would have been rough
25 on them. Because you want to let them have a few; you

1 need pizza when you're out on duty. You want to -- there
2 are --

3 MR. DAMMEIER: The --

4 JUSTICE BREYER: Look, so far I listened to four
5 things, and I'm just being naive about it. I'll read it
6 more closely, but I don't see why these four things are
7 so obviously more reasonable than what they did.

8 MR. DAMMEIER: They also -- they could have
9 had the officers redact the private messages and then
10 given it -- given it to the department.

11 JUSTICE SOTOMAYOR: But suppose that their
12 application of what -- how much was being spent on
13 business-related, all of your suggestions about having
14 the officer do things does nothing about their application.

15 MR. DAMMEIER: Well --

16 JUSTICE SOTOMAYOR: You're -- you're
17 relying on the very person you're auditing to do the
18 audit for you. That doesn't seem either practical or
19 business-wise.

20 MR. DAMMEIER: Well, other than my one
21 sample of -- example of saying, hey, let's -- let's stop
22 the personal use and we're going to have a test month
23 to determine exactly how many messages we need for our
24 business-related purposes.

25 JUSTICE SOTOMAYOR: That goes back to -- I

1 don't understand that. You're still relying on the
2 person you're auditing to say to you I'm only using
3 it for business. That -- that's just not logical.

4 MR. DAMMEIER: Well, but the -- the sole
5 purpose of the search was only to find out if officers
6 were paying for business-related messages that they
7 didn't need to pay for.

8 JUSTICE BREYER: But the question, in the
9 Constitution, the word is "unreasonable." Is it a
10 reasonable or unreasonable? So the question -- what I
11 asked is not maybe you would have gotten a better result
12 if you had hired Bain Associates and Bain would have
13 done a 4-month study at a cost of \$50,000.

14 But I could say a person who doesn't want
15 to hire Bain and who doesn't want to rely on the
16 unverified word of the officers who were using these for
17 God knows what is not being unreasonable. That's the
18 ultimate issue. And that's why I'm putting it to you
19 to show me that what they did was unreasonable.

20 MR. DAMMEIER: I think it comes down from
21 that perspective on the excessiveness of the search.

22 CHIEF JUSTICE ROBERTS: The only reason --
23 the only reason the officer would not be accurate -- I
24 mean, I don't understand why the redaction is such a bad
25 idea. He just says these are private. And that allows

1 -- and then you could look at everything else. You can
2 see if he's going too far because then everything else
3 would be there. But in terms of -- the jury found this
4 was not done to find out what was in the messages, so
5 they don't need to find out what's in the messages.
6 That's just a question. He has to pay for everything he
7 -- he redacts.

8 MR. DAMMEIER: That -- that's exactly what
9 we're saying. I mean, the interest here is -- is for
10 the officer to be upfront as far as what's
11 business-related to -- if he's paying for things that he
12 shouldn't be paying for, I'm sure he would -- he would be
13 forthright about that.

14 CHIEF JUSTICE ROBERTS: I mean, it's no
15 different than the police coming in and saying, well,
16 we're going to look at, you know, what's in every drawer
17 and then -- you know, then if it turns out to be
18 personal and private, we won't -- you know, we won't --
19 it just happens that we came upon, I guess, is
20 Justice Kennedy's point. It's kind of the plain view
21 doctrine, except they get to decide how broad what they
22 can view is.

23 MR. DAMMEIER: That's true. I agree with
24 that.

25 JUSTICE STEVENS: Can I ask you this question

1 about the basic background of a reasonable expectation
2 of privacy? This is SWAT team work. Supposing it was an
3 officer answering 911 calls or things like that. Isn't
4 there sort of a background expectation that sooner or
5 later, somebody might have to look at communications for
6 this particular kind of law enforcement officer?

7 MR. DAMMEIER: Well, certainly -- certainly
8 that could happen in any number of --

9 JUSTICE STEVENS: I mean, wouldn't you just
10 assume that that whole universe of conversations by SWAT
11 officers who are on duty 24/7 might well have to be
12 reviewed by some member of the public or some of their
13 superiors?

14 MR. DAMMEIER: But that -- that could be a
15 possibility on any -- on anything that they do in their
16 lives, whether it be their personal life or --

17 JUSTICE STEVENS: Well, but it's over
18 official -- it's over the official communications
19 equipment that they use for purposes of law enforcement.

20 MR. DAMMEIER: Correct. Correct.

21 JUSTICE KENNEDY: I certainly -- criminal
22 defense attorneys challenging probable cause would want
23 to look at these. They would want to see if there is
24 exonerating evidence, under the rule that all
25 exonerating evidence has to be submitted. It would seem

1 to me that it's quite likely, as Justice Stevens'
2 question indicates, that there is going to -- that these
3 are going to be discoverable.

4 MR. DAMMEIER: Well, it's just like my mail
5 that I might send out to somebody. It might be
6 discoverable in litigation, but that doesn't --

7 JUSTICE KENNEDY: But you're not -- you're
8 not a police officer who is making arrests. I mean,
9 this -- this is part and parcel of determining probable
10 cause and mitigating evidence.

11 MR. DAMMEIER: No, it -- obviously, there
12 are different reasons that could come into play that
13 would legally produce these messages, certainly.

14 JUSTICE SCALIA: Mr. Dammeier, you could say
15 the same thing about private phones. There are
16 obviously circumstances in which whether you were making
17 a call between certain times becomes relevant to
18 litigation. So you could say that destroys the
19 expectation of privacy? I'm not sure. I hope we don't
20 say that.

21 MR. DAMMEIER: No. No. It's like -- this
22 -- in O'Connor, all nine Justices in O'Connor found an
23 expectation of privacy in Dr. Ortega's desk, because
24 even though it was a state-owned desk, you still have an
25 expectation of privacy.

1 JUSTICE STEVENS: Yes, but there's no
2 normal reason for going through somebody's desk; whereas,
3 there would be a very ordinary -- ordinary reason for
4 reviewing calls made to the SWAT -- members of the SWAT
5 team, it seems to me.

6 MR. DAMMEIER: Well, there are -- as talked
7 about in O'Connor, there are certainly a lot of valid
8 reasons to go through a public employee's desk, if you're
9 looking for a file or if you're looking for --

10 JUSTICE STEVENS: Yes.

11 MR. DAMMEIER: Or for -- or for an
12 investigation. But still, there was that expectation of
13 privacy. You're talking about employees that -- in
14 today's society, I think work and private life get
15 melded together. Here, we're talking about SWAT people
16 24/7 --

17 JUSTICE SCALIA: Well, to say that there's
18 an expectation of privacy in the desk doesn't say that
19 every intrusion into that expectation of privacy is an
20 unreasonable one. There could be that expectation of
21 privacy and, still, for some reason -- let's assume there
22 has been a theft in the building, and it's known that
23 what was taken has not gotten out of the building. It's
24 conceivable that that would be a valid reason to intrude
25 upon the expectation of privacy, right?

1 MR. DAMMEIER: Correct. I don't think we're
2 taking away the government's ability to do searches
3 under proper circumstances.

4 JUSTICE SCALIA: Well, why isn't this a
5 proper circumstance?

6 MR. DAMMEIER: The initial circumstance
7 might be proper, but how they effectuated it was not.
8 It was excessively intrusive. They did not -- the
9 purpose was to find out if they were paying for enough
10 work-related messages. They did not need to look at
11 these, what they knew were going to be private messages.
12 They knew -- the lieutenant had this arrangement that they
13 could use this for personal purposes. They knew what
14 they were going to be looking at.

15 JUSTICE SCALIA: They didn't know which ones
16 were private messages, did they?

17 MR. DAMMEIER: Not until they read them.

18 JUSTICE SCALIA: Not until they read them.

19 MR. DAMMEIER: But there certainly -- they
20 certainly knew what might be coming because of the
21 arrangement that Lieutenant Duke had in place.

22 Here -- here I think that's --

23 JUSTICE ALITO: What was the arrangement
24 that Lieutenant Duke had in place? I thought all he
25 said was: I don't have an intent to read these,

1 because it's too much trouble, so if you go over and you
2 pay me the extra, I'm not going to read them.

3 MR. DAMMEIER: His --

4 JUSTICE ALITO: Did he ever say that -- that
5 I'm not -- that you have a privacy right in these
6 things?

7 MR. DAMMEIER: No, but according -- according
8 to Sergeant Quon's testimony, he told him: As long as you
9 pay the overages, we're not going to read them. And that --

10 JUSTICE GINSBURG: Did he say "we"? He -- even
11 Quon didn't say that. Duke said he wouldn't do it. But
12 earlier, the -- at the meeting, the statement was made
13 that these are open to audit. Didn't say only by
14 Lieutenant Duke.

15 MR. DAMMEIER: True. True. I agree. But
16 it was Lieutenant Duke, the one that was making the
17 announcement that now these pagers are going to fall
18 under the computer policy, the same lieutenant who then
19 gave the assurance that as long as you pay the overages,
20 we're not -- we're not going to look at them.

21 I mean, when you're talking about the
22 operational reality of O'Connor, that was the
23 operational reality. The SWAT members knew: As long as
24 I pay the overages, my messages aren't going to be
25 reviewed.

1 CHIEF JUSTICE ROBERTS: What happens, just
2 out of curiosity, if you're -- he is on the pager and
3 sending a message and they're trying to reach him for,
4 you know, a SWAT team crisis? Does he -- does the one
5 kind of trump the other, or do they get a busy signal?

6 MR. DAMMEIER: I don't think that's in the
7 record. However, my understanding is that you would get
8 it in between messages. So messages are going out and
9 coming in at the same time, pretty much.

10 CHIEF JUSTICE ROBERTS: And would you know
11 where the message was coming from?

12 MR. DAMMEIER: I believe so. It identifies
13 where it's coming from. It identifies the number of
14 where it's coming from. If you know the number, you
15 know where it's coming from.

16 JUSTICE KENNEDY: And he's talking with
17 a girlfriend, and he has a voice mail saying that your
18 call is very important to us; we'll get back to you?

19 (Laughter.)

20 MR. DAMMEIER: Well, I think with the text
21 messages -- and that's what we are talking about the
22 transcripts of, were the text messages that were data
23 transferred from device to device, and here, you know,
24 we come back to -- I did want to touch a little bit on
25 the Stored Communications Act having play on somebody's

1 expectation of privacy -- you know, it's -- lawfully,
2 those messages were protected. And I think, looking at
3 people's expectation of privacy, that should be a
4 component. It certainly may be not the end-all to the
5 question, but it should be a factor in determining
6 whether or not there's going to be an expectation of
7 privacy.

8 JUSTICE SCALIA: Did -- did he know about
9 that statute? I didn't know about it.

10 MR. DAMMEIER: That's not in -- that's not
11 in the record. That is not in the record. But --

12 JUSTICE SCALIA: Can we assume he didn't?

13 MR. DAMMEIER: Right. Well, we can assume
14 that, but we also --

15 JUSTICE SCALIA: And what difference would that
16 make?

17 MR. DAMMEIER: I still don't think anything,
18 given the operational realities --

19 JUSTICE SCALIA: I don't see how it can affect
20 his expectation of privacy, if he didn't even know about it.

21 MR. DAMMEIER: Well, it's -- it's just like
22 the California Public Records Act. We should also
23 assume he didn't know about that as well, because the --
24 Petitioners make an argument that because there is this
25 California Public Records Act, that that may diminish

1 one's expectation of privacy. Certainly, if we're
2 going to have that, then we should also be having the
3 Stored Communications Act that might enhance the --

4 JUSTICE SCALIA: Ignorance of the law is no
5 excuse, is what you're saying?

6 JUSTICE SOTOMAYOR: Do you have any theory,
7 or do you make any argument that Florio, Trujillo, and
8 Quon's wife can succeed in their Fourth Amendment
9 claims, if Quon can't?

10 MR. DAMMEIER: I do. We, in our brief, try
11 to analogize that to the mail. I think when they sent
12 messages to -- to Sergeant Quon, that was a letter that
13 I sent. And here, the department didn't go get that
14 letter from Sergeant Quon after -- after delivery,
15 meaning go get it from his pager. They went to the
16 equivalent of the Post Office, which was Arch Wireless,
17 and got a copy off of their server. So I -- I think --
18 and, again, analogizing to the mail, they have an
19 expectation of privacy while that message is in the
20 course of delivery.

21 CHIEF JUSTICE ROBERTS: Well --

22 JUSTICE ALITO: Well, suppose it was
23 perfectly clear that -- I mean, suppose that the department
24 gave Mr. Quon a policy -- a statement that says: Sign
25 this, you acknowledge that your pager is to be used only

1 for work and that you have no privacy interest in it
2 whatsoever; we're going to monitor this every day.
3 And then these other individuals sent him messages.
4 You would still say they have an expectation
5 of privacy in those messages?

6 MR. DAMMEIER: Until the point that it's on
7 Quon's pager. I think under that scenario, that they
8 could have obtained the messages from Quon, but they
9 went over to Arch, the equivalent of the Post Office,
10 and got them from them.

11 It's like if I -- I make a copy of a letter
12 before I send it to somebody. You know, down the road,
13 I might not know what happens and I might lose my
14 expectation of privacy down the road, but that copy I
15 kept, I think there is still an expectation.

16 JUSTICE SCALIA: Well, what -- when you send
17 a text message to somebody else, aren't you quite aware
18 that that text message will remain confidential only to
19 the extent that either the recipient keeps it
20 confidential -- and he can disclose it -- or somebody
21 else who has power over the recipient or over the
22 recipient's phone chooses to look at it? Don't -- isn't
23 that understood when you send somebody a text message?

24 MR. DAMMEIER: I -- I agree with that, and --

25 JUSTICE SCALIA: Well, so she should have

1 understood that, you know, whoever could get ahold of
2 his phone lawfully can read the message. In other
3 words, I don't see that she's in a -- in a different
4 position from Quon himself.

5 MR. DAMMEIER: I think it's just a slightly
6 different one. I mean, first of all, they didn't
7 lawfully get it; there was a violation of the Stored
8 Communications Act to get it.

9 JUSTICE SCALIA: Well, that's a different
10 issue.

11 MR. DAMMEIER: But here, again, had they
12 gotten consent from -- from Quon and got it from him
13 directly, that's a -- that's a different story.

14 CHIEF JUSTICE ROBERTS: Well, again, it depends
15 upon their reasonable expectation. Do any of these
16 other people know about Arch Wireless? Don't they just
17 assume that once they send something to Quon, it's going
18 to Quon?

19 MR. DAMMEIER: That's -- that is true. I
20 mean, they expect --

21 CHIEF JUSTICE ROBERTS: Well, then they
22 can't have a reasonable expectation of privacy based on
23 the fact that their communication is routed through a
24 communications company.

25 MR. DAMMEIER: Well, they -- they expect

1 that some company, I'm sure, is going to have to be
2 processing the delivery of this message. And --

3 CHIEF JUSTICE ROBERTS: Well, I didn't -- I
4 wouldn't think that. I thought, you know, you push a
5 button; it goes right to the other thing.

6 (Laughter.)

7 MR. DAMMEIER: Well --

8 JUSTICE SCALIA: You mean it doesn't go
9 right to the other thing?

10 (Laughter.)

11 MR. DAMMEIER: It's -- I mean, it's like
12 with e-mails. When we send an e-mail, that goes through
13 some e-mail provider, whether it be AOL or Yahoo. It's
14 going through some service provider. Just like when
15 we send a letter or package, it's going through -- some
16 provider is going to move that for us, until it gets to
17 the end recipient. And like the mail, that message enjoys
18 an expectation of privacy while it's with the Post
19 Office --

20 JUSTICE SCALIA: Can you print these things
21 out? Could Quon print these -- these spicy
22 conversations out and circulate them among his buddies?

23 MR. DAMMEIER: Well, he could have
24 ultimately, sure.

25 JUSTICE SCALIA: Well --

1 MR. DAMMEIER: And -- and like, when I get a
2 piece of mail from somebody, I could do that as well,
3 but that doesn't mean that the government gets to go to
4 the Post Office and get my mail before I get it. I
5 think -- I think that, you know, certainly adds a little
6 bit to the correspondence that dealt with --

7 CHIEF JUSTICE ROBERTS: But just -- just to
8 be clear: You think if these messages went straight to
9 Quon that there'd be no problem from the point of
10 view of the senders? I mean, no problem in searching --
11 getting them from Quon?

12 MR. DAMMEIER: I think it's certainly a
13 harder argument for me to make --

14 CHIEF JUSTICE ROBERTS: Yes.

15 MR. DAMMEIER: -- that they have an
16 expectation after -- after Quon has it.

17 CHIEF JUSTICE ROBERTS: So we have to assume
18 for your argument to succeed that they know that this goes
19 somewhere else and then it's processed and then it goes
20 to Quon.

21 MR. DAMMEIER: Yes, but I think in today's
22 -- I think in today's society that's -- that's a
23 reasonable assumption to make. One --

24 JUSTICE SCALIA: Yes, I didn't know.

25 MR. DAMMEIER: I think it might have been

1 Florio testified that she actually called her carrier to
2 find out, you know, if -- if the messages that she would
3 transmit would be maintained and that was -- that they
4 didn't maintain a copy. So there was some understanding
5 of how the process worked.

6 JUSTICE ALITO: Can an officer who has one
7 of these pagers delete messages from the pager --

8 MR. DAMMEIER: Yes.

9 JUSTICE ALITO: -- so that they can't be
10 recovered by the department if the pager is turned into
11 the department?

12 MR. DAMMEIER: Sure. Yes.

13 JUSTICE ALITO: They can delete them?

14 MR. DAMMEIER: They can delete them. Just
15 like if they received a letter, they could be put in the
16 shredder.

17 JUSTICE SCALIA: Suppose I sent somebody a
18 letter and -- and I have privacy in that letter, and
19 let's assume it's intercepted at the Post Office, but I
20 have also published the letter in a letter to the editor
21 of the newspaper. I have written the following letter
22 to Sergeant Quon. Do I still have a right -- a right of
23 privacy in that letter?

24 MR. DAMMEIER: Well, I think then certainly
25 your expectation may be diminished.

1 JUSTICE SCALIA: Well, but that's the
2 situation here. The -- the central location that stores
3 the message is one thing, but she's made -- made the
4 message public effectively by sending it to Quon. Once
5 it gets to Quon, she knows that Quon can make it public
6 or that the employer can -- can find out about it.

7 MR. DAMMEIER: But that would create a
8 free-for-all in service providers. If -- if while this
9 message, after it's sent and it's in transit --

10 JUSTICE SCALIA: Right.

11 MR. DAMMEIER: It's a free-for-all. The
12 government could just go in and --

13 JUSTICE SCALIA: Exactly. That -- and
14 that's why you have the statute, because the Fourth
15 Amendment wouldn't solve the problem, because you are
16 effectively making it public by sending it to somebody
17 whom you don't know is immune from disclosure. So, in
18 order to stop the intermediary from making it public,
19 you needed the statute. Otherwise you wouldn't need it;
20 the Fourth Amendment would solve the problem, right?

21 MR. DAMMEIER: Well, certainly, obviously
22 the statute could come into play in addition to the
23 Fourth Amendment. But here, you know, I come back to
24 the mail analogy. Just because at the end of the line
25 somebody might disseminate my letter doesn't lose an

1 expectation in the copy that I make that I may keep or
2 that in the course of delivery the Post Office might
3 keep. I still enjoy an expectation -- and the Fourth
4 Amendment certainly protects that copy, that either I
5 kept or the Post Office is keeping in the course of
6 delivery.

7 Certainly, at the end of the line, that letter
8 could be published to the world, but that's not the same
9 thing as the government coming in and getting a copy of
10 it while it was being delivered.

11 JUSTICE ALITO: Are you sure that -- are you
12 sure about your answer to the question of deletion?
13 It's not like deleting something from a computer which
14 doesn't really delete it from the computer?

15 MR. DAMMEIER: Honestly, I'm not -- that's
16 not in the record, and the -- how that pager works as
17 far as deleting, I couldn't be certain that it would be
18 deleted forever. I would certainly not.

19 One -- one of the points to -- to raise,
20 too, was that most of these texts took place off duty
21 when dealing with Sergeant Quon. So, again, back to
22 looking at the actual practice that O'Connor has us look
23 at, you know, here again --

24 JUSTICE SOTOMAYOR: I thought the factual
25 record was the opposite, that in fact most of the calls

1 were -- not most, but a huge number of calls were
2 happening on duty.

3 MR. DAMMEIER: There were -- there were a
4 large number on-duty. I think it was broken down to
5 where the average was 27 in a work shift and the most on
6 one day was 80. But also they talked about -- they took
7 about 15 seconds. So you're talking about an average
8 of about 7 minutes during -- during a work day.

9 But the testimony of Sergeant Quon was that
10 most of these were actually off-duty. And, you know, I
11 certainly -- I think that should come into play, given
12 the department -- they gave them pagers. And it wasn't
13 a one-way use; it wasn't, hey, this is, you know, for the
14 benefit of the employee. The department received a benefit.
15 I mean, they wanted to be able to have these SWAT guys
16 show up quickly, respond quickly, and there was a mix on
17 -- on the reasons for these pagers.

18 The exchange was, we're going to let you
19 use these for personal purposes, and given that reality,
20 you should be able to have some -- some expectation of
21 privacy in that use. It's like if I pick up a phone and
22 I'm a public employee and I call my wife, I should be
23 able to have some expectation of privacy in a
24 conversation, especially given, you know -- you talk
25 about guys that are on 24/7. Do they have no private

1 life, now? Do they not have --

2 JUSTICE GINSBURG: I thought the policy was
3 limited personal use.

4 MR. DAMMEIER: The computer policy was
5 limited personal use. Again, depending on how that
6 comes into play with what Lieutenant Duke --

7 JUSTICE GINSBURG: But the -- the notice was
8 we're going to treat these just like e-mails, and
9 e-mails were limited personal use.

10 MR. DAMMEIER: Correct. With -- with the
11 additional modification by -- by Duke, that you could
12 also use them for personal purposes, from day one when
13 the pagers were issued.

14 CHIEF JUSTICE ROBERTS: Thank you, counsel.

15 MR. DAMMEIER: Thank you.

16 CHIEF JUSTICE ROBERTS: Mr. Richland, you
17 have 3 minutes remaining.

18 REBUTTAL ARGUMENT OF KENT L. RICHARDS

19 ON BEHALF OF THE PETITIONERS

20 MR. RICHLAND: Thank you. I would first
21 like to just make it clear that what it is being claimed
22 was the guarantee of privacy by Lieutenant Duke is
23 really absolutely not that at all. And I would refer
24 the Court to Joint Appendix page 40, which does summarize
25 that, and it says -- here is what precisely what

1 Lieutenant Duke said: "Because of the overage
2 Lieutenant Duke went to Sergeant Quon and told him the
3 city-issued two-way pagers were considered e-mail and
4 could be audited." So that's what he said first.

5 Then he said -- he told Sergeant Quon it was
6 not his -- his intent to audit employees' text messages
7 to see if the overages were due to work-related
8 transmissions.

9 He advised Sergeant Quon he, Sergeant Quon,
10 could reimburse the city for the overages so he, Duke,
11 would not have to audit the transmission and see how
12 many messages were non-work-related. Lieutenant Duke
13 told Sergeant Quon he is doing this because if anybody
14 wished to challenge their overage, he could audit the
15 text transmissions to verify how many were
16 non-work-related, and then, finally, Lieutenant Duke
17 added, the text messages were considered public records
18 and could be audited at any time.

19 That is what is being characterized as a
20 guarantee of privacy. It's hard to see how that in any
21 way undercuts the official written policy.

22 JUSTICE SCALIA: Mr. Richland, do you take
23 any position on whether Jerilyn Quon, April Florio, and
24 Steve Trujillo stand in the same position as Sergeant
25 Quon insofar as this lawsuit is concerned?

1 MR. RICHLAND: We do, with respect -- in at
2 least one respect, and that is: If Sergeant Quon loses,
3 then we think the other plaintiffs must also lose.

4 JUSTICE SCALIA: Why?

5 MR. RICHLAND: Yes. The reason for that is
6 that this Court has held on many occasions that, once
7 one has sent a communication or an object to another
8 person, they lose their expectation of privacy in --

9 JUSTICE SOTOMAYOR: That means the
10 government can set up an interception mechanism on
11 telephone transmissions, on e-mail, computer
12 transmissions --

13 MR. RICHLAND: It -- it does not mean that,
14 Justice Sotomayor.

15 JUSTICE SOTOMAYOR: If it doesn't mean that,
16 answer his argument that, yes, you could take anything
17 from Quon, but the storage -- you went to the storage
18 facility, which is a Post Office.

19 MR. RICHLAND: And he says it's a Post
20 Office, but the truth is that all of these plaintiffs
21 admitted that they knew that this was a
22 department-issued pager, and this wasn't a Post Office.
23 Arch Wireless was the department's agent.

24 These text messages were being sent to
25 someplace. Both the written policy and the oral policy

1 indicated that they were being stored ---

2 JUSTICE SOTOMAYOR: So you have to get
3 into who owned --

4 MR. RICHLAND: Excuse me.

5 JUSTICE SOTOMAYOR: Whether this was a -- we
6 have to get into the Storage Act and figure out whether
7 this was an RCN or ACS?

8 MR. RICHLAND: Well, I think that -- I
9 don't know that it's necessary to do that, because I
10 think that all that must be determined is -- and I don't
11 think whether it's an ECS or RCS is -- you would require
12 that to determine who owned it, because it was clear
13 that Arch acted solely as the city's agent.

14 JUSTICE SCALIA: Whoa, whoa. I'm not sure
15 you're doing the city a favor by making Arch the city's
16 agent --

17 MR. RICHLAND: I understand --

18 JUSTICE SCALIA: -- as opposed to an
19 independent contractor who is doing business with the
20 city.

21 MR. RICHLAND: The point is --

22 JUSTICE SCALIA: You sure you want to live
23 with that?

24 MR. RICHLAND: I don't mean "agent" in -- in
25 the most literal sense, Justice Scalia.

1 JUSTICE SCALIA: Oh, okay.

2 MR. RICHLAND: What I mean is that they
3 were -- in effect, when there was a delivery to Arch
4 Wireless, it was a delivery to the city. And all of
5 these individuals knew that this was city equipment, and,
6 therefore, this was being delivered to the city.

7 CHIEF JUSTICE ROBERTS: Thank you, counsel.

8 The case is submitted.

9 (Whereupon, at 12:08 p.m., the case in the
10 above-entitled matter was submitted.)

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

A	<p>agent 57:23 58:13,16,24</p> <p>ago 8:24 19:1 23:3</p> <p>agree 8:9,17 10:19 22:6 38:23 43:15 47:24</p> <p>agreement 4:15</p> <p>agrees 5:3</p> <p>ahold 48:1</p> <p>AL 1:4,7</p> <p>Alito 16:1,10 21:14 22:4 42:23 43:4 46:22 51:6,9 51:13 53:11</p> <p>allegedly 4:1</p> <p>allows 26:4 37:25</p> <p>alternative 25:3</p> <p>amendment 3:13 11:10 20:6,12,19 21:5,8,25 22:11 23:6 46:8 52:15,20 52:23 53:4</p> <p>amicus 1:20 2:8 18:9</p> <p>amount 19:3 32:1</p> <p>analogize 46:11</p> <p>analogizing 46:18</p> <p>analogy 52:24</p> <p>analysis 11:23 21:5</p> <p>analyzed 10:15</p> <p>Angeles 1:16</p> <p>announced 29:2</p> <p>announcement 43:17</p> <p>answer 53:12 57:16</p> <p>answering 39:3</p>	<p>anybody 11:13 56:13</p> <p>anymore 31:10 31:20</p> <p>AOL 49:13</p> <p>appear 16:15</p> <p>APPEARAN... 1:15</p> <p>appendix 4:10 4:16 7:15,17 28:20 32:14 55:24</p> <p>application 36:12,14</p> <p>applied 3:12 4:10,15 18:23</p> <p>applies 23:8 29:16</p> <p>apply 28:3,13 29:12,14</p> <p>applying 28:7</p> <p>approach 15:3</p> <p>appropriate 7:12</p> <p>April 1:10 56:23</p> <p>Arch 9:9,20 17:11 19:12 30:7 46:16 47:9 48:16 57:23 58:13,15 59:3</p> <p>area 22:11,17</p> <p>argument 1:13 2:2,5,9,12 3:4 3:7,24 4:3 14:4 18:8 20:23 27:9,21 45:24 46:7 50:13,18 55:18 57:16</p> <p>arguments 12:19</p> <p>arrangement 42:12,21,23</p> <p>arrests 40:8</p> <p>arrows 24:20</p> <p>aside 6:13</p>	<p>asked 26:13 35:5 37:11</p> <p>asks 19:10</p> <p>aspect 4:6,21 5:21 10:12 13:18 15:5</p> <p>aspects 13:17</p> <p>associated 4:11 28:10,16</p> <p>Associates 37:12</p> <p>assume 5:13 8:19 9:25 11:4 39:10 41:21 45:12,13,23 48:17 50:17 51:19</p> <p>assuming 6:21 25:24</p> <p>assumption 50:23</p> <p>assurance 43:19</p> <p>attorneys 39:22</p> <p>attributed 31:6</p> <p>audit 5:7,16 31:4 36:18 43:13 56:6,11 56:14</p> <p>audited 5:19,20 56:4,18</p> <p>auditing 36:17 37:2</p> <p>average 54:5,7</p> <p>aware 7:2,7,9 47:17</p> <p>a.m 1:14 3:2</p>	<p>based 17:18 48:22</p> <p>basic 39:1</p> <p>basically 25:21</p> <p>basis 11:10 18:2</p> <p>bearing 21:24</p> <p>begins 11:4</p> <p>behalf 1:17,20 1:22 2:4,7,11 2:14 3:8 18:9 27:22 55:19</p> <p>believe 9:13,16 9:22,23 13:4 44:12</p> <p>benefit 54:14,14</p> <p>best 23:13</p> <p>better 23:8 37:11</p> <p>big 32:1 35:15</p> <p>billing 30:21 31:2</p> <p>bind 23:22</p> <p>binding 9:13</p> <p>bit 8:3 21:15 44:24 50:6</p> <p>BlackBerries 25:23</p> <p>blanket 26:7</p> <p>board 17:25</p> <p>boards 7:10</p> <p>boss 10:9</p> <p>bound 9:16 23:24</p> <p>BREYER 31:9 31:16,21,23 32:9,20,24 33:19 34:3,6 34:12,16,24 35:5,8,14,19 35:24 36:4 37:8</p> <p>brief 46:10</p> <p>broad 4:9,19 38:21</p> <p>broken 54:4</p> <p>buddies 49:22</p>
		B		
		<p>back 23:24 25:17 36:25 44:18,24 52:23 53:21</p> <p>background 39:1,4</p> <p>bad 11:16 37:24</p> <p>Bain 37:12,12 37:15</p> <p>banc 7:9</p>		

<p>building 41:22 41:23 bureau 30:18,18 business 5:13 28:16 31:14 33:7 37:3 58:19 business-related 35:23 36:13,24 37:6 38:11 business-wise 36:19 busy 44:5 button 49:5</p> <hr/> <p style="text-align: center;">C</p> <hr/> <p>C 2:1 3:1 California 1:3 1:16,22 9:1 20:7,11 45:22 45:25 call 16:25 40:17 44:18 54:22 called 51:1 calls 39:3 41:4 53:25 54:1 careful 22:10 carrier 51:1 carry 29:10 case 3:4 6:13,16 6:21 9:8,11,13 11:1,3,23 12:3 13:3,17 15:5 18:21 20:1 24:16 35:3 59:8,9 cases 9:2 11:10 11:12 12:5 cause 39:22 40:10 central 52:2 certain 16:13 40:17 53:17 certainly 4:18 8:13 18:6 20:22 29:16 30:5,5 31:15</p>	<p>31:19 34:15 39:7,7,21 40:13 41:7 42:19,20 45:4 46:1 50:5,12 51:24 52:21 53:4,7,18 54:11 certiorari 9:15 challenge 56:14 challenging 39:22 change 24:3 character 13:20 13:21 15:16 32:17 characterized 56:19 characters 30:23,25 34:7 charge 30:17 charges 33:9 chief 3:3,9,21,23 4:4,23 5:1,6 6:3,10,12,18 6:20,23 7:22 8:1,9,12,16,18 11:16 13:6,11 13:13,18 14:14 14:19,22 15:17 15:21 18:6,11 19:2 23:2,20 24:10 25:20 26:10,13 27:19 27:23 29:18 30:3 37:22 38:14 44:1,10 46:21 48:14,21 49:3 50:7,14 50:17 55:14,16 59:7 chiefs 10:5,21 chief's 18:20 chooses 47:22 Circuit 9:16 18:22 24:25</p>	<p>Circuit's 25:14 circulate 49:22 circumstance 42:5,6 circumstances 8:7 40:16 42:3 citing 25:1 city 1:3 3:4 4:13 11:2 28:21 29:14,25 30:7 31:24 56:10 58:15,20 59:4 59:5,6 city's 24:20 29:22,23 58:13 58:15 city-issued 56:3 city-owned 4:10 4:12,16 city-related 4:14 claim 12:3 17:8 claimed 55:21 claims 46:9 clear 18:20 29:16,17 33:4 46:23 50:8 55:21 58:12 clearest 24:9 clearly 16:9 20:6 33:16 client 13:6 closely 36:6 collect 31:11 collecting 33:2 collection 32:2 come 40:12 44:24 52:22,23 54:11 comes 30:10 32:22 37:20 55:6 comfortable 24:4 coming 38:15 42:20 44:9,11 44:13,14,15</p>	<p>53:9 commander 30:19 communicate 16:17 communication 48:23 57:7 communicatio... 5:4 7:5 8:10 15:22 17:3,10 17:12,20,23 19:17,20 20:9 20:10 21:8,16 22:19,21,25 39:5,18 44:25 46:3 48:8,24 company 48:24 49:1 complicated 8:3 18:1 31:11 component 45:4 components 28:15 computer 4:12 4:12,14 18:19 28:2,22 29:1,3 29:22,23 43:18 53:13,14 55:4 57:11 computers 4:11 4:16 computer-ass... 23:17 computer-rela... 23:17 computing 17:24 22:22 conceivable 41:24 concerned 30:21 56:25 concluded 18:23 conclusion 10:19 28:25 33:19 conduct 7:11</p>	<p>confidential 47:18,20 conflict 13:1,3,4 confusion 7:21 Congress 21:7 consent 34:20 35:6 48:12 considered 5:18 5:20 56:3,17 consistent 19:5 Constitution 23:8 37:9 constitutional 3:11 23:4 constitutionali... 22:10 constitutionali... 26:7 constitutionali... 9:4 22:17,17 contention 9:17 21:6 contest 30:24 context 20:21 contractor 58:19 contrary 8:22 conversation 54:24 conversations 39:10 49:22 copy 46:17 47:11,14 51:4 53:1,4,9 correct 5:5 8:13 11:19 12:14,23 14:12 39:20,20 42:1 55:10 correspondence 50:6 cost 37:13 counsel 6:11 8:8 9:25 18:6 19:11,13 27:19 55:14 59:7 counsel's 19:23</p>
---	--	--	---	--

<p>count 34:21 35:12 country 25:13 couple 30:15 course 3:24 8:4 8:25 9:3 11:7 23:8 46:20 53:2,5 court 1:1,13 3:10 8:21,24 9:14,14,14,15 9:24 17:25 18:12 19:24 20:4 21:10 22:10 23:14 25:3 27:24 55:24 57:6 courts 17:24 26:20 28:1,25 court's 10:20 19:1 cover 4:9,19 covered 5:9 coworkers 35:2 create 18:18 52:7 criminal 20:22 39:21 crisis 44:4 curiae 1:20 2:8 18:9 curiosity 44:2 current 17:8 cut 34:10 cuts 23:5</p> <hr/> <p style="text-align: center;">D</p> <hr/> <p>D 3:1 Dammeier 1:22 2:10 27:20,21 27:23 28:14 29:8,13,21 30:5 31:5,15 31:19,22 32:7 32:12,22 33:17 33:21 34:5,15 34:18 35:4,11</p>	<p>35:17,20 36:3 36:8,15,20 37:4,20 38:8 38:23 39:7,14 39:20 40:4,11 40:14,21 41:6 41:11 42:1,6 42:17,19 43:3 43:7,15 44:6 44:12,20 45:10 45:13,17,21 46:10 47:6,24 48:5,11,19,25 49:7,11,23 50:1,12,15,21 50:25 51:8,12 51:14,24 52:7 52:11,21 53:15 54:3 55:4,10 55:15 dangerous 26:6 data 44:22 day 47:2 54:6,8 55:12 de 26:4,12 dealing 4:23 23:6,10,15 53:21 deals 28:17 dealt 50:6 decide 11:9 24:10 38:21 decided 9:18 18:21 decides 10:6 deciding 31:10 decision 18:25 25:15 defense 39:22 delete 51:7,13 51:14 53:14 deleted 53:18 deleting 53:13 53:17 deletion 53:12 delivered 53:10</p>	<p>59:6 delivery 46:14 46:20 49:2 53:2,6 59:3,4 denial 7:9 denied 9:15 department 1:19 3:17 7:2 9:10 10:1,3 12:18 13:25 14:24 15:2 17:5,9,13 19:10,12,14 20:1 28:3 36:10 46:13,23 51:10,11 54:12 54:14 department's 57:23 department-is... 3:18 6:25 7:6 57:22 depending 55:5 depends 48:14 Deputy 1:18 desirable 33:8 desk 18:19,20 40:23,24 41:2 41:8,18 destroys 40:18 destructive 25:18 determination 9:17,24 11:8 12:7 13:10,18 determine 7:11 12:1 14:20 15:13,18 17:22 20:5 22:2 32:16 36:23 58:12 determined 32:13 58:10 determining 23:9 40:9 45:5 device 16:2,5,11</p>	<p>30:1 44:23,23 devices 16:5,7 DIETER 1:22 2:10 27:21 differ 32:20 difference 6:1 29:19 45:15 different 5:21 13:7 20:24 21:20 22:21 24:5,5 26:3,6 27:3 32:11 38:15 40:12 48:3,6,9,13 differently 13:14,16 diminish 45:25 diminished 51:25 directly 48:13 disagree 21:2 disclose 8:13 47:20 disclosed 17:15 disclosure 52:17 discoverable 40:3,6 disregards 18:25 disseminate 52:25 dissenters 7:8 district 19:24 doctrine 38:21 doing 33:11 56:13 58:15,19 don't 9:12 45:19 Dr 40:23 drawer 38:16 due 56:7 Duke 4:21 5:24 28:4 29:2,4 30:9,9,11 31:7 42:21,24 43:11 43:14,16 55:6 55:11,22 56:1</p>	<p>56:2,10,12,16 duty 5:15 14:21 15:24 16:21 30:2,2 36:1 39:11 53:20 54:2 D.C 1:9,19</p> <hr/> <p style="text-align: center;">E</p> <hr/> <p>E 2:1 3:1,1 earlier 6:19 7:14 8:25 28:6 43:12 easier 25:10,12 easiest 23:13 easily 29:25 ECS 58:11 editor 51:20 effect 9:3 59:3 effectively 52:4 52:16 effectuated 42:7 efficacious 13:20 efficacy 32:17 either 17:23 36:18 47:19 53:4 electronic 17:23 20:9 21:15 22:24 electronically 16:8 eliminate 26:12 emergencies 17:1 emergency 25:25 employee 28:11 28:13 29:6,9 29:17 54:14,22 employees 18:13 19:7 20:25 25:14 26:11 41:13 56:6 employee's 41:8 employer 3:12</p>
---	---	--	---	--

<p>10:17 18:16 19:4 23:16 26:3 33:13 52:6 employers 18:14 18:15 25:13 26:10 employer's 24:8 en 7:9 enacted 9:5 21:7 21:9 ends 11:4 end-all 45:4 enforced 4:2 enforcement 39:6,19 Engquist 19:2 enhance 46:3 enjoy 53:3 enjoys 49:17 ensure 32:17 entire 15:3 entirely 22:6 entity 17:11,22 22:23 entries 16:16 equipment 4:11 4:12,17 23:17 28:10,15,16 29:24 30:7 39:19 59:5 equipped 25:7 equivalent 46:16 47:9 especially 54:24 ESQ 1:16,18,22 2:3,6,10,13 essentially 22:25 established 18:15 ET 1:4,7 evaluating 26:14 everybody 5:2 11:12 29:19 31:22 evidence 39:24</p>	<p>39:25 40:10 evolving 23:10 exactly 36:23 38:8 52:13 example 4:10 22:16 36:21 excess 30:25 excessively 33:23 42:8 excessiveness 37:21 exchange 54:18 exclusionary 20:21 excuse 13:12 15:7 46:5 58:4 existence 26:21 existing 32:17 exists 19:8 exonerating 39:24,25 expect 28:13 29:10 48:20,25 expectation 3:16 6:15 8:14,23 10:9,12,15,20 10:22 11:5,25 12:8,12,20,24 13:15 17:17 18:2,18 19:7 21:25 22:3 23:18 27:14 39:1,4 40:19 40:23,25 41:12 41:18,19,20,25 45:1,3,6,20 46:1,19 47:4 47:14,15 48:15 48:22 49:18 50:16 51:25 53:1,3 54:20 54:23 57:8 expectations 4:24 21:5,12 26:8 expected 11:17</p>	<p>expecting 24:12 expenses 32:19 explain 33:16 34:3 explicit 3:19 extent 47:19 extra 30:23 43:2 extremely 17:21 17:21 e-mail 4:13 5:19 6:9,15 16:15 16:18 28:22 29:20,21 49:12 49:13 56:3 57:11 e-mails 8:13 12:10 28:11 29:6,12 30:4 49:12 55:8,9</p> <hr/> <p style="text-align: center;">F</p> <hr/> <p>facilities 22:24 facility 57:18 fact 4:4 7:3,8 8:22 9:17 10:18 15:21 17:14,17,18 27:25 32:13 48:23 53:25 factor 45:5 factors 6:21 24:5 facts 13:2,4 factual 13:3 53:24 fall 43:17 far 30:21 36:4 38:2,10 53:17 fault 33:4 favor 12:17 58:15 Federal 9:6 21:4 fee 31:8 figure 22:1 58:6 file 41:9 fill 20:17 21:8 filthy-minded</p>	<p>11:15 final 9:20 finally 4:14 56:16 find 24:15,18 37:5 38:4,5 42:9 51:2 52:6 finding 32:15 Fine 32:9 first 3:15 4:8 10:12 11:24 17:7 22:12 33:14 34:9,20 48:6 55:20 56:4 fix 22:15 flat 27:13 flexible 23:9 flip 26:22 Florio 46:7 51:1 56:23 flux 22:7 follow 4:1 6:3 8:19 following 25:12 51:21 forever 53:18 form 22:20 28:19 forthright 38:13 forward 35:22 found 11:2 18:22 32:14 34:1 38:3 40:22 four 36:4,6 Fourth 3:13 11:10 20:6,12 20:19 21:5,8 21:25 22:11 46:8 52:14,20 52:23 53:3 freeze 22:13 23:3 free-for-all 52:8 52:11</p>	<p>front 21:21 fully 25:7,7</p> <hr/> <p style="text-align: center;">G</p> <hr/> <p>G 3:1 gap 20:18 gaps 21:8 garage 23:23 garbage 21:20 general 1:18 15:14 generate 22:11 getting 50:11 53:9 get-go 24:25 Giarratano 22:16 Ginsburg 5:23 6:6 12:6,15 17:2,7 28:9 29:5,9 30:20 43:10 55:2,7 girlfriend 44:17 girlfriends 10:3 give 17:4 26:10 given 4:7 9:8 17:4 33:25 36:10,10 45:18 54:11,19,24 giving 31:25 go 10:7 12:13 41:8 43:1 46:13,15 49:8 50:3 52:12 God 37:17 goes 29:22,23,23 30:1 36:25 49:5,12 50:18 50:19 going 5:6,15,25 7:3 8:6,19 10:6 10:21 14:25 22:15 23:9 25:24,25 28:7 29:3,3,7 30:13 30:14,22 31:17 35:14,21 36:22</p>
--	---	---	--	--

38:2,16 40:2,3 41:2 42:11,14 43:2,9,17,20 43:24 44:8 45:6 46:2 47:2 48:17 49:1,14 49:15,16 54:18 55:8 good 34:9,9 gotten 37:11 41:23 48:12 governing 21:23 government 3:12 18:15 19:3,6 50:3 52:12 53:9 57:10 government's 24:22,24 42:2 governs 18:16 granted 12:17 greater 19:3 Greenwood 9:1 20:7,12,20 ground 25:6 grounds 11:2 14:9 guarantee 11:11 30:12 55:22 56:20 guess 11:9 35:5 38:19 guys 54:15,25	hey 29:2 30:10 35:15,21 36:21 54:13 higher 9:14 13:21 high-profile 7:1 hire 37:15 hired 37:12 history 21:17 hoc 18:17 25:17 holdings 19:1 home 25:25 30:1 honestly 33:12 53:15 Honor 32:8 hope 40:19 house 21:21 huge 54:1 huh 25:10 hypothetical 6:13 19:22	informally 18:24 information 4:6 21:24 informs 28:18 initial 13:10,18 42:6 inquiries 7:10 inquiry 14:17,18 15:13 insofar 56:25 instance 22:12 30:6 instructions 3:25 5:2 intent 42:25 56:6 intercepted 51:19 interception 57:10 interest 10:6,8 10:10 38:9 47:1 intermediary 52:18 Internal 14:1,18 14:23 15:11 Internet 4:13 28:22 intrude 41:24 intrusion 41:19 intrusive 33:23 42:8 intuitive 22:7 investigation 41:12 involved 7:4 13:25 involving 7:3 32:1 isn't 20:18 issue 9:15 37:18 48:10 issued 9:20 27:1 55:13	it's 11:17 19:25 20:15,17 21:3 21:6 24:8 47:6 50:19 51:19 52:9,9 I'll 30:24 35:15 36:5 I'm 33:4 37:2,18	24:10,15,22 25:9,10,20 26:10,13,24 27:4,9,19,23 28:9 29:5,9,18 30:3,20 31:9 31:16,21,23 32:9,20,24 33:19 34:3,6 34:12,16,24 35:5,8,14,19 35:24 36:4,11 36:16,25 37:8 37:22 38:14,20 38:25 39:9,17 39:21 40:1,7 40:14 41:1,10 41:17 42:4,15 42:18,23 43:4 43:10 44:1,10 44:16 45:8,12 45:15,19 46:4 46:6,21,22 47:16,25 48:9 48:14,21 49:3 49:8,20,25 50:7,14,17,24 51:6,9,13,17 52:1,10,13 53:11,24 55:2 55:7,14,16 56:22 57:4,9 57:14,15 58:2 58:5,14,18,22 58:25 59:1,7 Justices 40:22 Justice's 19:2
<hr/> H <hr/> happen 35:1 39:8 happened 21:21 35:3 happening 54:2 happens 38:19 44:1 47:13 hard 56:20 harder 50:13 hear 3:3 held 9:21 57:6 help 18:19	<hr/> I <hr/> idea 25:18 37:25 identifies 44:12 44:13 Ignorance 46:4 ignore 14:11 illegal 8:12 9:9 immune 52:17 impact 10:13,14 important 15:6 44:18 incident 7:12 incidents 7:4 included 3:19 including 19:1 33:7 inconsistency 4:5 incorrectly 9:18 independent 58:19 indicated 58:1 indicates 40:2 individuals 47:3 59:5	<hr/> J <hr/> Jeff 1:7 3:15 jeopardy 25:15 Jerilyn 56:23 job-related 15:14,22 Joint 55:24 judge 12:25 13:5 judges 25:5 judgment 9:20 12:17 jury 11:1,7 12:7 12:13,16,25 13:2 32:12,13 32:16 33:10 34:1 38:3 Justice 1:19 3:3 3:9,21,23 4:4 4:23 5:1,6,23 6:6,10,11,12 6:18,20,23 7:13,17,20,22 8:1,8,9,12,16 8:18 9:7,12,19 9:23,25 10:4,5 10:11,18,24 11:9,20,21 12:6,15,19,24 13:6,11,13 14:3,6,9,13,14 14:19,22 15:7 15:17,21 16:1 16:10,20 17:2 17:7 18:6,11 19:9,18,21 20:9,11,20 21:1,14 22:4 22:15 23:2,20	<hr/> K <hr/> K 1:18 2:6 18:8 Katyal 1:18 2:6 18:7,8,11 19:16,19 20:3 20:15 21:1 22:4 23:12 24:9,19,24 25:11 26:2	

<p>27:4,15 keep 53:1,3 keeping 53:5 keeps 47:19 Kennedy 9:7,12 9:19,23 12:19 14:3,6,9,13 19:9,18,21 20:9,11,20 21:1 39:21 40:7 44:16 Kennedy's 22:15 38:20 KENT 1:16 2:3 2:13 3:7 55:18 kept 47:15 53:5 kind 38:20 39:6 44:5 knew 10:1 42:11 42:12,13,20 43:23 57:21 59:5 know 6:19 13:19 16:20 23:22 24:1,2,6 25:11 25:25 27:12 31:12,16 33:5 34:8 35:9 38:16,17,18 42:15 44:4,10 44:14,15,23 45:1,8,9,20,23 47:12,13 48:1 48:16 49:4 50:5,18,24 51:2 52:17,23 53:23 54:10,13 54:24 58:9 known 41:22 knows 29:19 37:17 52:5</p> <hr/> <p style="text-align: center;">L</p> <hr/> <p>L 1:16 2:3,13 3:7 55:18 lack 19:7 language 27:5</p>	<p>large 54:4 Laughter 3:22 16:23 34:11 35:7,18 44:19 49:6,10 law 8:19,22 9:5 9:8,13 18:1 21:8 39:6,19 46:4 lawfully 17:5 45:1 48:2,7 laws 20:5 lawsuit 24:17 56:25 leeway 19:3 legal 19:10,22 legally 40:13 legislative 22:18 legislature 9:6 22:14 legitimate 14:9 letter 46:12,14 47:11 49:15 51:15,18,18,20 51:20,21,23 52:25 53:7 let's 9:25 19:24 19:25 36:21,21 41:21 51:19 lieutenant 3:25 4:21 5:24 28:4 29:2,4 30:11 30:16,17 31:6 35:20 42:12,21 42:24 43:14,16 43:18 55:6,22 56:1,2,12,16 life 39:16 41:14 55:1 light 3:18 limit 13:20,21 15:16 limited 10:25 33:25 55:3,5,9 limits 10:24 32:17</p>	<p>line 52:24 53:7 list 6:19 listen 10:10 11:18 listened 36:4 listens 11:16 literal 58:25 litigating 12:5 litigation 7:3 40:6,18 little 7:13 8:3 21:15,20 24:12 44:24 50:5 live 58:22 lives 39:16 location 52:2 logical 37:3 long 6:1 21:22 27:16 30:12 43:8,19,23 look 11:24 13:22 14:10,24 15:1 15:6,18 19:15 20:2 23:15 29:12 30:13,14 30:22,24 31:17 33:1,22 36:4 38:1,16 39:5 39:23 42:10 43:20 47:22 53:22 looked 13:23 15:10,12 33:5 looking 10:14 26:17 27:6 29:21 33:21 41:9,9 42:14 45:2 53:22 looks 23:6 Los 1:16 lose 47:13 52:25 57:3,8 loses 57:2 loss 22:1 lot 23:21 41:7 lower 10:20</p>	<p>26:20 28:1,25</p> <hr/> <p style="text-align: center;">M</p> <hr/> <p>mail 40:4 44:17 46:11,18 49:17 50:2,4 52:24 maintain 51:4 maintained 51:3 making 40:8,16 43:16 52:16,18 58:15 matter 1:12 21:4 59:10 mean 9:4 20:3 23:21 24:16 28:10 29:10 37:24 38:9,14 39:9 40:8 43:21 46:23 48:6,20 49:8 49:11 50:3,10 54:15 57:13,15 58:24 59:2 meaning 46:15 means 57:9 mechanism 57:10 meeting 5:24 6:2 6:4,7 28:6 31:3 43:12 melded 41:15 member 7:1 18:18 39:12 members 30:12 41:4 43:23 memo 6:6 memorialized 6:7 mere 8:22 message 16:2,4 16:11 44:3,11 46:19 47:17,18 47:23 48:2 49:2,17 52:3,4 52:9 messenger 25:23 messages 3:17</p>	<p>3:20 4:5,9 5:10 5:13,18 6:8,16 10:7 13:7,8,23 14:2,10,21,25 15:12,14,18,19 16:6,21 23:1 30:14 31:4,12 33:24 34:7,22 35:1,13 36:9 36:23 37:6 38:4,5 40:13 42:10,11,16 43:24 44:8,8 44:21,22 45:2 46:12 47:3,5,8 50:8 51:2,7 56:6,12,17 57:24 messaging 4:19 15:8,10,25 16:14 millions 18:13 25:14 mine 24:8 minimis 26:4,12 minute 27:1 minutes 54:8 55:17 misspoke 16:24 mitigating 40:10 mix 54:16 modification 55:11 modifications 30:15 modified 3:24 18:24 28:5 moment 23:3 Monday 1:10 money 31:11 33:2 monitor 5:25 28:12,22 29:25 47:2 monitored 12:10 29:7</p>
---	--	---	---	---

<p>monitoring 28:19 month 35:22 36:22 Moore 8:24 motive 10:13,13 move 49:16 mucking 31:13 Murray 22:16</p> <hr/> <p style="text-align: center;">N</p> <hr/> <p>N 2:1,1 3:1 naive 34:6 36:5 nationwide 20:13,17 nature 15:6 27:10 NEAL 1:18 2:6 18:8 necessarily 20:18 necessary 58:9 need 13:20 14:24 15:15 16:3,3 34:2 36:1,23 37:7 38:5 42:10 52:19 needed 13:22 52:19 networks 4:13 never 12:16 new 21:18 23:5 newspaper 51:21 night 10:3 nine 40:22 Ninth 9:16 18:22 24:25 25:14 non-policy 18:18 non-work-rel... 56:12,16 normal 41:2 noted 17:25 notice 55:7</p>	<p>notion 25:18 novel 21:13 no-privacy 4:21 18:16 number 8:21 9:1 39:8 44:13,14 54:1,4</p> <hr/> <p style="text-align: center;">O</p> <hr/> <p>O 2:1 3:1 object 57:7 observed 19:6 obtained 47:8 obviously 36:7 40:11,16 52:21 occasions 57:6 offending 11:17 offers 22:23 Office 46:16 47:9 49:19 50:4 51:19 53:2,5 57:18 57:20,22 officer 6:25 8:2 8:5 10:8,16 35:6,14 36:14 37:23 38:10 39:3,6 40:8 51:6 officers 12:9 15:23,23 32:18 34:20,21,22,25 35:12 36:9 37:5,16 39:11 official 7:6 25:16 39:18,18 56:21 off-duty 5:10 13:7 14:2,24 15:8,19,23 16:21 54:10 oh 7:17 16:13 20:3 29:6 31:21 59:1 okay 27:2 34:12 35:19,20 59:1 old 24:3</p>	<p>Oliver 9:2 once 13:9 14:10 27:13 48:17 52:4 57:6 ones 34:22 42:15 one's 46:1 one-way 54:13 Ontario 1:3 3:5 3:15,17 12:18 on-duty 13:7 15:10 54:4 open 43:13 operational 3:18 26:25 27:3,5 27:11 43:22,23 45:18 opinion 11:6 19:2,5,10,23 22:15 opposed 3:13 58:18 opposite 53:25 oral 1:12 2:2,5,9 3:7 4:6,20 5:22 18:8 27:21 57:25 order 24:17 52:18 ordered 13:19 ordinary 41:3,3 Oregon 19:2 Ortega's 40:23 other's 31:14 overage 31:7 56:1,14 overages 30:13 34:23 43:9,19 43:24 56:7,10 owned 58:3,12 owns 31:24 O'Connor 11:6 19:5 27:16,17 33:22 40:22,22 41:7 43:22 53:22 O'Connor's</p>	<p>26:25</p> <hr/> <p style="text-align: center;">P</p> <hr/> <p>P 3:1 package 49:15 page 2:2 7:14 32:15 55:24 pager 3:18 5:3 6:25 7:6 16:3 16:15 28:13 29:20 31:24,24 44:2 46:15,25 47:7 51:7,10 53:16 57:22 paggers 4:19 15:25 16:2,12 18:23 28:3,6 29:2,10,25 30:6,14 43:17 51:7 54:12,17 55:13 56:3 parcel 40:9 parking 23:22 26:22 part 9:10 15:3 28:17 40:9 particular 7:11 39:6 particularly 5:9 17:19 pay 5:7,14 6:1 24:7,7 30:13 30:23 31:7 32:18 37:7 38:6 43:2,9,19 43:24 paying 5:8 33:14 34:23 37:6 38:11,12 42:9 Payner 18:1 pending 9:24 people 8:19 10:3 24:3 25:21 28:5,18 31:25 41:15 48:16 people's 33:7 45:3</p>	<p>perfectly 46:23 periodically 28:22 peripheral 4:13 permit 8:23 permits 27:18 person 6:2 23:19 30:8 36:17 37:2,14 57:8 personal 6:15 14:21 15:15 25:24 28:16 34:8 36:22 38:18 39:16 42:13 54:19 55:3,5,9,12 perspective 26:16 37:21 petition 7:16,18 28:21 32:15 Petitioners 1:5 1:17,21 2:4,8 2:14 3:8 18:10 45:24 55:19 phone 47:22 48:2 54:21 phones 40:15 physically 16:8 pick 54:21 piece 50:2 pizza 36:1 place 18:16 21:16 22:14 23:4 27:7,17 33:15 42:21,24 53:20 plain 14:4 38:20 plaintiffs 57:3 57:20 play 28:4 29:1,3 30:10 32:23 40:12 44:25 52:22 54:11 55:6 please 3:10 18:12 27:24</p>
--	--	---	--	---

plurality 11:6 19:5	35:21 53:22	probably 33:4	putting 21:20 37:18	34:10,25 36:5 42:17,18,25
point 8:2,5 9:7 23:1,1,2 38:20 47:6 50:9 58:21	precisely 8:25 12:2 21:7 22:9 55:25	problem 50:9,10 52:15,20	puzzling 21:15	43:2,9 48:2
points 53:19	preclude 17:12	proceedings 20:22	p.m. 59:9	reading 33:25
police 3:15,17 6:3,25 7:2,10 7:11 9:10 10:1 10:2 11:15 12:18 38:15 40:8	premise 22:5	process 51:5	Q	reads 23:25 29:6
policies 18:14 20:24 25:13,19	present 6:22	processed 50:19	question 10:12 10:14 11:24 12:12,25,25 13:5 15:15 16:7 19:16 20:12 21:2,3 22:5 29:5 32:5 33:11 37:8,10 38:6,25 40:2 45:5 53:12	realities 3:19 26:25 27:3,5 45:18
policy 3:20,21 4:1,1,6,8,15,18 4:22 5:2,22,22 6:9,13,14 7:19 7:20,23,24 8:1 18:16,23,24 19:6 23:15,16 24:11,14 25:16 26:2,4,16,18 26:20,23 27:2 27:8,10,13,17 28:2,5,7,14,17 28:20 29:1,4,6 29:10,22 43:18 46:24 55:2,4 56:21 57:25,25	presume 13:2	processing 49:2	questions 26:21	reality 27:12 43:22,23 54:19
position 12:15 24:23,24 25:5 25:21 48:4 56:23,24	pretermit 22:18	produce 40:13	quickly 26:23 54:16,16	really 11:14 22:13 25:7 53:14 55:23
positive 9:4	pretty 15:2 44:9	proper 26:17 42:3,5,7	quite 33:12 40:1 47:17	reason 11:22 12:2,4,4 20:8 20:16 22:9 29:11,12 32:13 33:15,20 37:22 37:23 41:2,3 41:21,24 57:5
possibility 39:15	print 23:23 49:20,21	proposition 21:13	quiver 24:20	reasonable 3:16 4:24 5:12 6:14 8:14,18,23 10:12,15 11:2 11:5,7,25 12:2 12:8,11,20,21 12:24 15:4,5 17:17 18:2,18 19:7 20:23 21:5,11,24 22:2 23:7,10 23:15 24:2,10 26:8 34:13,17 36:7 37:10 39:1 48:15,22 50:23
possible 25:8	privacy 3:16,20 4:5 6:15 8:14 8:23 10:9,13 10:15,22 11:5 11:10,12,14,17 11:25 12:8,12 12:21,25 13:15 17:18 18:3,19 19:7,8 20:5,10 21:4,6,12,23 21:25 22:3 23:18 24:13,14 24:16 26:5,8 27:12,14 28:18 30:11 39:2 40:19,23,25 41:13,18,19,21 41:25 43:5 45:1,3,7,20 46:1,19 47:1,5 47:14 48:22 49:18 51:18,23 54:21,23 55:22 56:20 57:8	prurient 10:8,10	Quon 1:7 3:5,15 8:2 15:24 26:14 31:6 43:11 46:9,12 46:14,24 47:8 48:4,12,17,18 49:21 50:9,11 50:16,20 51:22 52:4,5,5 53:21 54:9 56:2,5,9,9 56:13,23,25 57:2,17	reasonableness 26:15
Post 46:16 47:9 49:18 50:4 51:19 53:2,5 57:18,19,22	private 5:3,13 21:19,20 24:7 28:11 31:1 33:6 36:9 37:25 38:18 40:15 41:14 42:11,16 54:25	prying 31:14 33:7	Quon's 4:24 8:5 43:8 46:8 47:7	reasonably 8:6
power 47:21	privilege 31:25	public 5:20 11:13 12:11 39:12 41:8 45:22,25 52:4 52:5,16,18 54:22 56:17	R	reasons 8:20 10:25 15:25 29:14 40:12 41:8 54:17
practical 35:10 36:18	probable 39:22 40:9	published 51:20 53:8	R 3:1	REBUTTAL 2:12 55:18
practice 4:2		purpose 11:8 13:21 15:13 32:16 33:25,25 37:5 42:9	raise 15:16 53:19	received 51:15
		purposes 31:1,1 33:6,6 36:24 39:19 42:13 54:19 55:12	rapidly 22:7	
		push 49:4	RCN 58:7	
		put 5:11 6:13 18:19 51:15	RCS 58:11	
		puts 23:20 25:5 25:15	RCSs 22:23	
			reach 44:3	
			read 10:21 31:7	

54:14 recipient 47:19 47:21 49:17 recipient's 47:22 recognize 28:2 record 16:18 44:7 45:11,11 53:16,25 records 5:20 45:22,25 56:17 recovered 51:10 redact 14:25 36:9 redacted 14:1 14:15,17 redaction 37:24 redacts 38:7 refer 55:23 referred 7:14 28:6 regard 15:6 regarding 22:3 regulation 27:8 regulations 13:25 27:7 reimburse 56:10 related 4:16 27:11 31:13 relationship 10:16 relatively 21:18 relevant 40:17 reliance 25:15 25:19 rely 25:13 37:15 relying 36:17 37:1 remain 47:18 remaining 55:17 remand 9:19 remote 17:24 22:22,22 renders 27:2 repeated 19:1 32:5 repeatedly 8:21	20:4 23:19 25:4 repeating 35:9 request 32:7 requesting 17:14 requests 7:5 require 25:21 58:11 required 32:18 requirements 23:4 reserve 18:4 resolve 13:2 23:14 25:9 respect 15:18 17:9 20:24 23:4 27:16 57:1,2 respected 20:25 respond 17:1 54:16 Respondents 1:23 2:11 27:22 rest 18:4 restrictive 3:11 25:3 result 26:9 37:11 retracted 31:3 reversed 18:25 reviewed 39:12 43:25 reviewing 41:4 RICHARDS 55:18 Richland 1:16 2:3,13 3:6,7,9 4:3,25 5:5,17 6:5,17,20,24 7:13,15,19,24 8:4,11,16,20 9:12,22 10:4 10:11,23 11:3 11:19,22 12:14	12:23 13:1,9 13:12,16 14:5 14:8,12,17,20 14:23 15:9,20 16:6,13,24 17:7 55:16,20 56:22 57:1,5 57:13,19 58:4 58:8,17,21,24 59:2 right 4:24 5:7,8 8:15 11:14,17 14:16,22 15:19 19:14,15 24:13 24:15,20 25:23 27:6 33:9 34:16,24 35:4 35:9 41:25 43:5 45:13 49:5,9 51:22 51:22 52:10,20 road 47:12,14 ROBERTS 3:3 3:21,23 4:23 5:1,6 6:10,12 6:18,23 7:22 8:1,9,12,18 13:6,11,13 14:14,19,22 15:17 18:6 23:2,20 25:20 27:19 29:18 30:3 37:22 38:14 44:1,10 46:21 48:14,21 49:3 50:7,14 50:17 55:14,16 59:7 rough 35:24 routed 48:23 rule 18:21 20:21 26:7 27:13 39:24 rules 22:11 29:15	S 2:1 3:1 salacious 10:6 12:4 sample 36:21 saw 13:24 saying 30:21 31:23 36:21 38:9,15 44:17 46:5 says 5:25 23:16 25:17 26:8,18 27:13,16 28:21 29:6 35:8 37:25 46:24 55:25 57:19 SCA 8:10 Scalia 7:13,17 7:20 11:9,20 11:21 12:24 15:7 16:20 24:15,22 25:9 25:10 40:14 41:17 42:4,15 42:18 45:8,12 45:15,19 46:4 47:16,25 48:9 49:8,20,25 50:24 51:17 52:1,10,13 56:22 57:4 58:14,18,22,25 59:1 scenario 47:7 Schowengerdt 25:1 scope 20:5 32:23 33:17 scrupulous 15:2 search 11:6,8 12:1,22 14:4,4 15:4 24:23 25:2 26:15,15 32:14,16,23 33:17,23 34:1 37:5,21 searches 25:6	27:2 42:2 searching 50:10 second 14:18 seconds 54:7 second-guessing 25:6 see 14:10 17:14 30:24 31:17 32:3 33:11 36:6 38:2 39:23 45:19 48:3 56:7,11 56:20 send 16:1,4,11 19:14 40:5 47:12,16,23 48:17 49:12,15 senders 50:10 sending 14:21 44:3 52:4,16 sense 25:12 58:25 sent 6:6 14:1 16:7 33:6 46:11,13 47:3 51:17 52:9 57:7,24 separate 29:25 Sergeant 3:15 15:24 31:5 43:8 46:12,14 51:22 53:21 54:9 56:2,5,9,9 56:13,24 57:2 serious 14:6 server 29:23 46:17 service 17:23,24 22:25 49:14 52:8 services 4:14 22:23 set 57:10 sets 26:3 setting 25:19 sexual 35:1
---	--	--	--	--

<p>shape 22:20 Sharp 13:19 shift 54:5 show 37:19 54:16 shredder 51:16 Sign 46:24 signal 44:5 simple 18:20 20:8,16 simplest 26:19 simply 14:20 17:18 18:1,19 23:14 26:20 situation 52:2 skipping 28:1 slightly 48:5 small 23:23 society 8:7 41:14 50:22 sole 37:4 solely 58:13 Solicitor 1:18 solutions 22:18 solve 52:15,20 somebody 11:18 39:5 40:5 47:12,17,20,23 50:2 51:17 52:16,25 somebody's 41:2 somebody's 44:25 someplace 57:25 sooner 39:4 sorry 7:20 13:12 14:15 sort 5:11 11:24 16:2 39:4 Sotomayor 6:11 8:8 9:25 10:4,5 10:11,18,24 26:24 27:4,9 36:11,16,25 46:6 53:24 57:9,14,15</p>	<p> 58:2,5 sound 35:10 sounds 33:10 sovereign 3:13 specifically 6:8 28:19,21 spent 14:21 36:12 spicy 49:21 spoke 10:3 spring 21:12 stage 14:18 15:11,11 stand 56:24 standard 20:13 20:17,17 25:1 standards 3:12 standpoint 26:14 start 34:12 started 33:24 35:22 State 9:5 20:17 stated 4:9 6:8 8:21 statement 6:2 43:12 46:24 statements 4:20 6:7 18:17 States 1:1,13,20 2:7 9:2 18:1,9 20:22,24 state-owned 40:24 statute 17:19,19 17:20 21:4 45:9 52:14,19 52:22 statutes 21:23 stayed 9:24 Steve 56:24 Stevens 38:25 39:9,17 40:1 41:1,10 stop 35:21 36:21 52:18</p>	<p>storage 22:23 57:17,17 58:6 stored 8:10 17:3 17:10,12,20 19:17,19 20:8 21:7,16 22:19 22:20 44:25 46:3 48:7 58:1 stores 52:2 story 48:13 straight 50:8 study 37:13 subject 29:7 31:4 submitted 39:25 59:8,10 subordinate 25:17 30:17 subscriber 17:13 succeed 46:8 50:18 suggested 16:16 suggestions 36:13 suggests 16:19 summarize 55:24 summary 12:16 superfluous 12:7 superiors 39:13 supervisors 10:2 supplant 18:20 supporting 1:21 2:8 18:10 suppose 14:5 19:10 24:15 36:11 46:22,23 51:17 Supposing 39:2 Supreme 1:1,13 sure 29:8,13,21 33:22 35:22 38:12 40:19 49:1,24 51:12</p>	<p> 53:11,12 58:14 58:22 suspect 24:2 sustain 24:17 SWAT 7:1,4 15:23 16:25 30:12 33:13 39:2,10 41:4,4 41:15 43:23 44:4 54:15</p> <hr/> <p style="text-align: center;">T</p> <hr/> <p>T 2:1,1 take 9:8 17:2,4 27:5 56:22 57:16 taken 25:17 41:23 talk 54:24 talked 41:6 54:6 talking 31:2 41:13,15 43:21 44:16,21 54:7 team 7:1,4 15:23 16:25 30:12 33:13 39:2 41:5 44:4 technical 17:21 technologies 18:13,17 22:6 technology 23:5 23:11 24:4 26:9,11 telephone 57:11 tell 24:2 31:22 34:16 35:16 tempered 8:6 template 21:11 terms 8:24 24:11 38:3 test 25:1 26:17 36:22 testified 31:6 51:1 testimony 43:8 54:9 text 3:17,20 4:5</p>	<p> 4:9,19 5:18 6:8 6:15 13:7,7,23 15:8,10,12,14 15:25 16:14 25:23 31:4 44:20,22 47:17 47:18,23 56:6 56:15,17 57:24 texts 10:7 53:20 thank 18:5,11 27:19,23 55:14 55:15,20 59:7 that's 5:5 7:22 12:14,23 14:12 17:20 32:9 42:22 theft 41:22 theory 13:14 46:6 there'd 50:9 there's 6:13 11:25 12:20 23:16,18 41:1 41:17 45:6 they're 5:9,15 13:14 24:6 25:6,24,25 44:3 thing 11:16 20:14 23:23 28:13 32:6 33:4 40:15 49:5,9 52:3 53:9 things 5:8 10:21 20:8 22:3 23:21 25:22,24 26:1,6 36:5,6 36:14 38:11 39:3 43:6 49:20 think 8:10 9:9 11:3,12,12,13 11:19,21,22 14:12 15:3,5 19:19 20:4,6,7</p>
--	---	--	---	---

20:15,22 21:2 21:12 22:4,9 22:13 23:7,12 23:13 24:7,9 24:20 25:3,8 25:12,18 26:6 26:16,17,19 27:15,25 28:24 29:11 32:7 37:20 41:14 42:1,22 44:6 44:20 45:2,17 46:11,17 47:7 47:15 48:5 49:4 50:5,5,8 50:12,21,22,25 51:24 54:4,11 57:3 58:8,10 58:11 thinking 25:4 34:13 third 33:3 35:19 thought 30:20 32:24 42:24 49:4 53:24 55:2 thousands 25:12 ticket 26:22 time 5:18,21 14:21 18:4 21:22 33:3 44:9 56:18 times 40:17 tired 33:2 today 18:13 today's 41:14 50:21,22 told 5:17 12:9 23:19 24:6,13 28:5,11 43:8 56:2,5,13 touch 44:24 transcripts 9:9 16:16 17:4,6 17:14 19:11,15 20:2 44:22	transferred 44:23 transit 52:9 transmission 22:25 56:11 transmissions 56:8,15 57:11 57:12 transmit 51:3 transmittal 19:11 transmitted 30:8 trash 22:8 travels 30:1 treat 12:10 13:7 13:13 55:8 treated 6:8 13:16 trouble 43:1 true 9:15 38:23 43:15,15 48:19 Trujillo 46:7 56:24 trump 44:5 truth 57:20 try 46:10 trying 44:3 turn 9:9 turned 51:10 turns 38:17 two 8:24 12:19 13:17 22:21 24:19 25:21,22 28:15 35:16 two-step 11:23 two-way 56:3 type 16:5,10	understand 14:15 21:3 26:23 32:24 37:1,24 58:17 understanding 8:7 21:19 44:7 51:4 understandings 22:8 understands 29:17 understood 47:23 48:1 undo 26:25 United 1:1,13,20 2:7 9:2 17:25 18:9 universe 39:10 unlawful 17:10 unreasonable 24:12,18 31:18 32:6,8,10 33:12,16,18 37:9,10,17,19 41:20 unreasonable... 24:23 unverified 37:16 upfront 38:10 Upland 1:22 usage 28:23 use 5:3 16:11 17:5 18:13,17 21:10 24:6 26:4,5,12 28:15,22 30:2 30:22 32:1 36:22 39:19 42:13 54:13,19 54:21 55:3,5,9 55:12 usual 23:22	valid 41:7,24 variety 26:5 various 16:7 20:5 verify 56:15 view 8:2,5 14:4 14:7 38:20,22 50:10 views 10:20 violated 17:11 19:17 22:20 violation 3:14 19:12,13,23,24 19:25 48:7 violations 13:25 Virginia 8:24 virtue 7:2 vis-à-vis 3:16 voice 44:17	well-established 21:18 went 6:19 30:6,7 32:10 46:15 47:9 50:8 56:2 57:17 weren't 16:21 we're 30:14 35:21 we'll 12:5 44:18 we're 5:6 14:25 23:5,9 28:11 30:13 36:22 38:9,16 41:15 42:1 43:9,20 43:20 46:1 47:2 54:18 55:8 whatsoever 47:2 what's 23:9 24:2 24:22 31:9,17 38:5,10 whoa 58:14,14 wife 46:8 54:22 Wireless 17:11 30:7 46:16 48:16 57:23 59:4 wished 56:14 wives 35:2 wonder 23:5 word 37:9,16 words 6:18 14:7 32:25 48:3 work 26:1 31:1 31:13,24 32:1 32:3,4 33:6 39:2 41:14 47:1 54:5,8 worked 51:5 working 17:22 workplace 3:19 27:1,6 works 53:16 work-related 32:19 34:9	
	<hr/> U <hr/>		<hr/> W <hr/>		
	ultimate 37:18 ultimately 49:24 undercuts 56:21 underlying 22:5 27:25 undermined 4:21	understand 14:15 21:3 26:23 32:24 37:1,24 58:17 understanding 8:7 21:19 44:7 51:4 understandings 22:8 understands 29:17 understood 47:23 48:1 undo 26:25 United 1:1,13,20 2:7 9:2 17:25 18:9 universe 39:10 unlawful 17:10 unreasonable 24:12,18 31:18 32:6,8,10 33:12,16,18 37:9,10,17,19 41:20 unreasonable... 24:23 unverified 37:16 upfront 38:10 Upland 1:22 usage 28:23 use 5:3 16:11 17:5 18:13,17 21:10 24:6 26:4,5,12 28:15,22 30:2 30:22 32:1 36:22 39:19 42:13 54:13,19 54:21 55:3,5,9 55:12 usual 23:22	valid 41:7,24 variety 26:5 various 16:7 20:5 verify 56:15 view 8:2,5 14:4 14:7 38:20,22 50:10 views 10:20 violated 17:11 19:17 22:20 violation 3:14 19:12,13,23,24 19:25 48:7 violations 13:25 Virginia 8:24 virtue 7:2 vis-à-vis 3:16 voice 44:17	want 13:19 23:3 26:24,24,25 27:12 29:11,15 31:7,11,20,25 34:25 35:8,25 36:1 37:14,15 39:22,23 44:24 58:22 wanted 16:1 33:1,5 34:8 54:15 wants 32:2,2 warning 28:12 Washington 1:9 1:19 wasn't 6:2 29:1 30:16 33:7 54:12,13 57:22 way 15:9 16:17 22:8,20 23:5 23:13,13 24:9 25:4,8,10 26:17,19 34:9 35:10,19 56:21 ways 34:18 weight 23:21	
	<hr/> V <hr/>				
	v 1:6 3:5 8:24 9:1,2 18:1 19:2 20:7,11 22:16				

35:15 42:10	11:06 1:14 3:2			
56:7	119 32:15			
world 53:8	12:08 59:9			
wouldn't 24:16	15 54:7			
24:17 28:12	152 4:10,12 7:14			
29:9,12 39:9	156 4:16 7:14			
43:11 49:4	28:20			
52:15,19	18 2:8			
write 29:17	19 1:10			
writes 29:15	1999 18:23,24			
writing 6:3				
written 3:21 4:1	<hr/> 2 <hr/>			
4:6,8,18,22 5:2	2 19:1			
6:9,13,14 7:20	20 34:7			
7:23,24 26:18	2010 1:10			
27:1,13 51:21	24/7 15:24 16:21			
56:21 57:25	16:25 39:11			
wrong 25:1,4	41:16 54:25			
26:16 31:9	25,000 30:22,25			
	27 2:11 54:5			
<hr/> X <hr/>				
x 1:2,8	<hr/> 3 <hr/>			
	3 2:4 55:17			
<hr/> Y <hr/>	30,000 34:7			
Yahoo 49:13				
years 18:24 19:1	<hr/> 4 <hr/>			
you're 23:24	4-month 37:13			
33:13,14 36:1	40 55:24			
36:16,16,17				
37:1,2 40:7,7	<hr/> 5 <hr/>			
41:8,9,13	55 2:14			
43:21 46:5				
54:7 58:15	<hr/> 7 <hr/>			
you've 5:14	7 54:8			
10:25 24:7,13				
<hr/> Z <hr/>	<hr/> 8 <hr/>			
zone 26:4	80 54:6			
<hr/> \$ <hr/>	<hr/> 9 <hr/>			
\$50,000 37:13	911 39:3			
<hr/> 0 <hr/>				
08-1332 1:5 3:4				
<hr/> 1 <hr/>				
1,800 34:7				