1   IN THE SUPREME COURT OF THE UNITED STATES

2 - - - - - - - - - - - - - - - - - x

3 UNITED STATES,   :

4   Petitioner   :

5   v.   :   No. 10-1259

6 ANTOINE JONES   :

7 - - - - - - - - - - - - - - - - - x

8   Washington, D.C.

9   Tuesday, November 8, 2011

10

11   The above-entitled matter came on for oral

12 argument before the Supreme Court of the United States

13 at 10:07 a.m.

14 APPEARANCES:

15 MICHAEL R. DREEBEN, ESQ., Deputy Solicitor General,

16   Department of Justice, Washington, D.C.; on

17   behalf of Petitioner.

18 STEPHEN C. LECKAR, ESQ., Washington, D.C.; on behalf of

19   Respondent.

20

21

22

23

24

25

1   C O N T E N T S

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1   P R O C E E D I N G S

2   (10:07 a.m.)

3   CHIEF JUSTICE ROBERTS: We'll hear argument

4   first this morning in Case 10-1259, United States v.

5   Jones.

6   Mr. Dreeben.

7   ORAL ARGUMENT OF MICHAEL R. DREEBEN

8   ON BEHALF OF THE PETITIONER

9   MR. DREEBEN: Mr. Chief Justice, and may it

10   please the Court:

11   Since this Court's decision in Katz v.

12   United States, the Court has recognized a basic

13   dichotomy under the Fourth Amendment. What a person

14   seeks to preserve as private in the enclave of his own

15   home or in a private letter or inside of his vehicle

16   when he is traveling is a subject of Fourth Amendment

17   protection. But what he reveals to the world, such as

18   his movements in a car on a public roadway, is not.

19   In Knotts v. United States, this Court

20   applied that principle to hold that visual and beeper

21   surveillance of a vehicle traveling on the public

22   roadways infringed no Fourth Amendment expectation of

23   privacy.

24   CHIEF JUSTICE ROBERTS: Knotts, though,

25   seems to me much more like traditional surveillance.

1 You're following the car, and the beeper just helps you

2 follow it from a -- from a slightly greater distance.

3 That was 30 years ago. The technology is very

4 different, and you get a lot more information from the

5 GPS surveillance than you do from following a beeper.

6   MR. DREEBEN: The technology is different,

7 Mr. Chief Justice, but a crucial fact in Knotts that

8 shows that this was not simply amplified visual

9 surveillance is that the officers actually feared

10 detection in Knotts as the car crossed from Minnesota to

11 Wisconsin. The driver began to do certain U-turns and,

12 the police broke off visual surveillance. They lost

13 track of the car for a full hour. They only were able

14 to discover it by having a beeper receiver in a

15 helicopter that detected the beeps from the radio

16 transmitter in the can of chloroform.

17   CHIEF JUSTICE ROBERTS: But that's a good

18 example of the change in technology. That's a lot of

19 work to follow the car. They've got to listen to the

20 beeper; when they lose it, they've got to call in the

21 helicopter. Here they just sit back in the station, and

22 they -- they push a button whenever they want to find

23 out where the car is. They look at data from a month

24 and find out everywhere it's been in the past month.

25 That -- that seems to me dramatically different.

1   MR. DREEBEN: But it doesn't expose

2   anything, Mr. Chief Justice, that isn't already exposed

3   to public view for anyone who wanted to watch, and that

4   was the crucial principle that the Court applied --

5   JUSTICE KENNEDY: Well, under that

6   rationale, could you put a beeper surreptitiously on the

7   man's overcoat or sport coat?

8   MR. DREEBEN: Probably not, Justice Kennedy;

9   and the reason is that this Court in Karo v. United

10   States -- United States v. Karo -- specifically

11   distinguished the possibility of following a car on a

12   public roadways from determining the location of an

13   object in a place where a person has a reasonable

14   expectation of privacy.

15   JUSTICE KENNEDY: Oh, no. This is a special

16   device. It measures only streets and public elevators

17   and public buildings.

18   MR. DREEBEN: In that event, Justice

19   Kennedy, there is a serious question about whether the

20   installation of such a device would implicate either a

21   search or a seizure. But if it did not, the public

22   movements of somebody do not implicate a seizure.

23   JUSTICE KENNEDY: Well -- and on that latter

24   point, you might just be aware that I have serious

25   reservations that there wasn't -- that there -- about

1   the way in which this beeper was installed. But you can

2   get to that at -- at your convenience.

3   JUSTICE SCALIA: Mr. Dreeben, I'd like to

4   get to it now.

5   (Laughter.)

6   MR. DREEBEN: Happy to, Your Honor.

7   JUSTICE SCALIA: I have to give a little

8   prologue to my question. When -- when wiretapping first

9   came before this Court, we held that it was not a

10   violation of the Fourth Amendment because the Fourth

11   Amendment says that the -- the people shall be secure in

12   their persons, houses, papers, and effects against

13   unreasonable searches and seizures. And wiretapping

14   just picked up conversations. That's not persons,

15   houses, papers, and effects.

16   Later on, we reversed ourselves, and, as you

17   mentioned, Katz established the new criterion, which is,

18   is there an invasion of privacy? Does -- are you

19   obtaining information that a person had a reasonable

20   expectation to be kept private? I think that was wrong.

21   I don't think that was the original meaning of the

22   Fourth Amendment. But, nonetheless, it's been around

23   for so long, we're not going to overrule that.

24   However, it is one thing to add that privacy

25   concept to the Fourth Amendment as it originally

1 existed, and it is quite something else to use that

2 concept to narrow the Fourth Amendment from what it

3 originally meant. And it seems to me that when that

4 device is installed against the will of the owner of the

5 car on the car, that is unquestionably a trespass and

6 thereby rendering the owner of the car not secure in his

7 effects -- the car is one of his effects -- against an

8 unreasonable search and seizure. It is attached to the

9 car against his will, and it is a search because what it

10 obtains is the location of that car from there forward.

11 Now, why -- why isn't that correct? Do you deny that

12 it's a trespass?

13   MR. DREEBEN: It may be a technical

14 trespass, but it was equally a technical trespass in the

15 United States v. Karo, when a can of ether was

16 transferred to somebody that had -- and it had a radio

17 transmitter --

18   JUSTICE KENNEDY: Well, but the owner of the

19 can at the time it was installed consented, and that is

20 not this case. There is no consent by the owner of the

21 property to which this device was affixed. In fact, it

22 was done, as Justice Scalia indicated, surreptitiously.

23   MR. DREEBEN: But there was no consent to

24 the owner of the can once he acquired it to have it

25 contain a foreign item installed by the government.

1   And --

2   JUSTICE SCALIA: Well, that's too bad. That

3   doesn't make it a trespass. I mean --

4   MR. DREEBEN: Well, this Court thought that

5   it --

6   JUSTICE SCALIA: It may be a sneaky thing to

7   do, but -- but every sneaky thing is not a trespass.

8   MR. DREEBEN: Well, this Court thought that

9   it was a technical trespass in Karo and said that made

10   no difference because the purpose of the Fourth

11   Amendment is to protect privacy interests and meaningful

12   interferences with possessory interests, not to cover

13   all technical trespasses. And the case that I --

14   JUSTICE SCALIA: So, we've narrowed the

15   Fourth Amendment?

16   MR. DREEBEN: Well, I think the Court --

17   JUSTICE SCALIA: So, the -- the privacy

18   rationale doesn't expand it but narrows it in some

19   respects.

20   MR. DREEBEN: It changes it, Justice Scalia.

21   And I think the case that most clearly illustrates the

22   distinction between trespass and Fourth Amendment

23   protection is Oliver v. United States, the case that

24   reaffirmed the open fields doctrine. In that case,

25   there was absolutely no doubt that the police committed

1   a trespass under local law. They entered, they crossed

2   fences, they ignored big "no trespassing" signs; and

3   this Court held that the interests that are protected by

4   trespass law are distinct from the interests protected

5   by the Fourth Amendment.

6   JUSTICE SCALIA: Undoubtedly, but the

7   rationale of that case was that it was not an

8   unreasonable --

9   MR. DREEBEN: No, the rationale was that --

10   JUSTICE SCALIA: -- it was not an

11   unreasonable search.

12   MR. DREEBEN: -- there was no search,

13   Justice Scalia. The rationale of that case was that

14   open fields are not among the things that are protected

15   by the Fourth Amendment. And the Court was very

16   specifically focused on the distinction between trespass

17   law and Fourth Amendment law.

18   CHIEF JUSTICE ROBERTS: You think there

19   would also not be a search if you put a GPS device on

20   all of our cars, monitored our movements for a month?

21   You think you're entitled to do that under your theory?

22   MR. DREEBEN: The Justices of this Court?

23   CHIEF JUSTICE ROBERTS: Yes.

24   (Laughter.)

25   MR. DREEBEN: Under our theory and under

1   this Court's cases, the Justices of this Court when

2   driving on public roadways have no greater expectation

3   of --

4   CHIEF JUSTICE ROBERTS: So, your answer is

5   yes, you could tomorrow decide that you put a GPS device

6   on every one of our cars, follow us for a month; no

7   problem under the Constitution?

8   MR. DREEBEN: Well, equally, Mr. Chief

9   Justice, if the FBI wanted to, it could put a team of

10   surveillance agents around the clock on any individual

11   and follow that individual's movements as they went

12   around on the public streets, and they would thereby

13   gather --

14   JUSTICE ALITO: Well, that seems to get --

15   to me to get to what's really involved here. The issue

16   of whether there's a technical trespass or not is

17   potentially a ground for deciding this particular case,

18   but it seems to me the heart of the problem that's

19   presented by this case and will be presented by other

20   cases involving new technology is that in the

21   pre-computer, pre-Internet age, much of the privacy -- I

22   would say most of the privacy -- that people enjoyed was

23   not the result of legal protections or constitutional

24   protections; it was the result simply of the difficulty

25   of traveling around and gathering up information.

1   But with computers, it's now so simple to

2   amass an enormous amount of information about people

3   that consists of things that could have been observed on

4   the streets, information that was made available to the

5   public. If -- if this case is decided on the ground

6   that there was a technical trespass, I don't have much

7   doubt that in the near future, it will be possible -- I

8   think it's possible now in many instances -- for law

9   enforcement to monitor people's movements on -- on

10   public streets without committing a technical trespass.

11   So, how do we deal with this? Do we just

12   say, well, nothing is changed, so that all the

13   information that people expose to the public is -- is

14   fair game? There's no -- there's no search or seizure

15   when that is -- when that is obtained because there

16   isn't a reasonable expectation of privacy, but isn't

17   there a real change in -- in this regard?

18   MR. DREEBEN: I don't think, Justice Alito,

19   that there's a particularly dramatic change in this case

20   from what went on in the Karo and the Knotts cases.

21   It is possible to envision broader advances

22   in technology that would allow more public information

23   to be amassed and put into computer systems. But I

24   think that the remedy for that -- if this Court agrees

25   with the principles in Knotts and Karo and applies them

1   to this case, the remedy is through legislation, just as

2   when the Court held that amassing pen register data, all

3   of the numbers that you dial on your telephone, the

4   lengths of the times of the calls. The Court was

5   confronted in that case with Justice Stewart's view in

6   dissent, that --

7   JUSTICE GINSBURG: There was a third party

8   involved in the telephone -- in the pen register case.

9   And, here, it's the police. Essentially, I think you

10   answered the question that the government's position

11   would mean that any of us could be monitored whenever we

12   leave our homes. So, the only thing secure is the home.

13   Is -- I mean, that is -- that is the end point of your

14   argument, that an electronic device, as long as it's not

15   used inside the house, is okay.

16   MR. DREEBEN: Well, we're talking here about

17   monitoring somebody's movements in public. We're not

18   talking about monitoring their conversations, their

19   telephone calls, the interior of their cars, their

20   private letters or packages. So, there are enclaves of

21   Fourth Amendment protection that this Court has

22   recognized.

23   JUSTICE BREYER: What -- what is the

24   question that I think people are driving at, at least as

25   I understand them and certainly share the concern, is

1   that if you win this case, then there is nothing to

2   prevent the police or the government from monitoring 24

3   hours a day the public movement of every citizen of the

4   United States. And -- and the difference between the

5   monitoring and what happened in the past is memories are

6   fallible; computers aren't.

7   And no one, or at least very rarely, sends

8   human beings to follow people 24 hours a day. That

9   occasionally happens. But with the machines, you can.

10   So, if you win, you suddenly produce what sounds like

11   1984 from their brief. I understand they have an

12   interest in perhaps dramatizing that, but -- but maybe

13   overly. But it still sounds like it.

14   And so, what protection is there, if any,

15   once we accept your view of the case, from this slight

16   futuristic scenario that's just been painted and is done

17   more so in their briefs?

18   MR. DREEBEN: Justice Breyer, first of all,

19   this is exactly the argument that was presented to the

20   Court in Knotts. If you go back to 1983, the beeper

21   technology in that case seemed extraordinarily advanced,

22   and there was a potential for it to be used. The

23   Respondent --

24   JUSTICE BREYER: Of course, that's true.

25   And they do have a limit. In this case, they say Knotts

1   involved a single journey, or let's say it involved four

2   journeys. And let's say it involved four journeys in

3   2 days. This involves every journey for a month. So,

4   they say whatever the line is that's going to protect

5   us, it's short of every journey in a month.

6   So, I'm not asking -- I'm saying I accept

7   your point there. And what do you say is the limit?

8   MR. DREEBEN: I first want to address the

9   suggestion that you could draw a line somewhere between

10   a month and a trip and have a workable standard for

11   police officers to use. Police officers use a variety

12   of investigative techniques which in the aggregate

13   produce an enormous amount of information. Pen

14   registers, trash pulls. They look at financial records.

15   They conduct visual surveillance. And under a principle

16   of law that says 1 trip is okay but 30 trips is not,

17   there is absolutely no guidance for law enforcement in

18   how they are --

19   JUSTICE BREYER: Well, there is the same

20   kind of guidance that you have in any case of this Court

21   that uses the technique which is used sometimes, and I

22   think it's used for example in the bribing the judge

23   case, you know, with campaign contributions. You draw

24   an outer limit, you say you can't go beyond that. We

25   know within that, there is no standard. We'll leave it

1   for the lower courts to work out, and we'll review it

2   over time.

3   That's not necessarily desirable, but that

4   is a method this Court has sometimes used.

5   MR. DREEBEN: Well, I --

6   JUSTICE BREYER: But even if it's wrong, I

7   want to know, are you saying there is no limit or are

8   you suggesting one?

9   MR. DREEBEN: I'm suggesting that the Court

10   do the same thing that it did in Knotts. This case does

11   not involve 24-hour surveillance of every citizen of the

12   United States. It involves following one suspected drug

13   dealer as to whom there was very strong suspicion, for a

14   period of time that actually is less than a month,

15   because the beeper technology failed during --

16   CHIEF JUSTICE ROBERTS: Well, then you're --

17   you're moving away from your argument. Your argument is

18   it doesn't depend how much suspicion you have; it

19   doesn't depend on how urgent it is. Your argument is

20   you can do it, period. You don't have to give any

21   reason. It doesn't have to be limited in any way,

22   right?

23   MR. DREEBEN: That is correct, Mr. Chief

24   Justice.

25   CHIEF JUSTICE ROBERTS: Well, isn't the

1   normal way in these situations that we draw these limits

2   how intrusive the search can be, how long it can be, is

3   by having a magistrate spell it out in a warrant?

4   MR. DREEBEN: When you're talking about the

5   movements of a car on a public roadway, which even

6   Justice Breyer's question seems to concede could be

7   monitored for a day or perhaps 4 days, there is no

8   Fourth Amendment search, unless --

9   CHIEF JUSTICE ROBERTS: Well, you're talking

10 about the difference between seeing a little tile and

11 seeing a mosaic. The one gives you information; the

12 other doesn't.

13   MR. DREEBEN: So does a pen register. So

14 does a garbage pull. So does looking at everybody's

15 credit card statement for a month. All of those things

16 this Court has held are not searches. And the --

17   JUSTICE GINSBURG: Mr. Dreeben, this case

18 started out with a warrant. There was a warrant, and

19 the limits weren't followed. The warrant said 10 days,

20 do this in 10 days, and the police took 11. They were

21 supposed to do it in D.C. Instead, they did it in

22 Maryland.

23   So, the police could have gotten permission

24 to conduct this search. In fact, they had received it.

25 Now, I take it that the practice had been, because it's

1   in the electronic surveillance manual, better get a

2   warrant. Was there any problem about -- when this kind

3   of surveillance is wanted by the government, to get a

4   warrant? Were they encountering difficulty getting

5   warrants?

6   MR. DREEBEN: In this case, there would not

7   have been any difficulty getting a warrant, Justice

8   Ginsburg. And the warrant authorized things beyond just

9   monitoring the car. It authorized entering the car in

10   order to install it, which wasn't necessary here. It

11   also authorized monitoring the car in a location where

12   there was a reasonable expectation of privacy. This

13   case is only about monitoring a car on public streets.

14   But I think it's very important to keep in

15   mind that the -- the principal use of this kind of

16   surveillance is when the police have not yet acquired

17   probable cause but have a situation that does call for

18   monitoring. And I'd like to give an example.

19   If the police get an anonymous phone call

20   that a bomb threat is going to be carried out at a

21   mosque by people who work at a small company, the bomb

22   threat on an anonymous call will not provide even

23   reasonable suspicion under this Court's decision in

24   Florida v. J.L.

25   But you can hardly expect the FBI to ignore

1 a credible, detailed-sounding piece of information like

2 that. Now, the --

3   CHIEF JUSTICE ROBERTS: If you get an

4 anonymous tip that there's the same bomb in somebody's

5 house, do you get a warrant or do -- do you just go in?

6   MR. DREEBEN: You do neither, because

7 without probable cause you cannot enter the house.

8   CHIEF JUSTICE ROBERTS: Right. Well, why

9 are you asking for a different rule in this situation?

10   MR. DREEBEN: Because the -- the police in

11 this situation have the traditional means available to

12 investigate these sorts of tips. They could put teams

13 of agents on all the individuals who are within the pool

14 of suspicion and follow them 24/7. And that would

15 raise --

16   JUSTICE SOTOMAYOR: You're -- you're now

17 suggesting an answer to Justice Kennedy's question,

18 which is it would be okay to take the computer chip, put

19 it on somebody's overcoat, and follow every citizen

20 everywhere they go indefinitely. So -- under your

21 theory and the theory espoused in your brief, you could

22 monitor and track every person through their cell phone,

23 because today the smartphones emit signals that police

24 can pick up and use to follow someone anywhere they go.

25   Your theory is so long as the -- that all --

1   that what is being monitored is the movement of person,

2   of a person, they have no reasonable expectation that

3   their possessions will not be used by you. That's

4   really the bottom line --

5   MR. DREEBEN: I think that --

6   JUSTICE SOTOMAYOR: -- to track them, to

7   invade their sense of integrity in their choices about

8   who they want to see or use their things. That's really

9   argument you're making.

10   MR. DREEBEN: Well, Justice Sotomayor, I

11   think that that goes considerably farther than our

12   position in this case, because our position is not that

13   the Court should overrule United States v. Karo and

14   permit monitoring within a private residence. That is

15   off limits absent a warrant or exigent circumstances

16   plus probable cause. And monitoring an individual

17   through their clothing poses an extremely high

18   likelihood that they will enter a place where they have

19   a reasonable expectation of privacy.

20   JUSTICE SOTOMAYOR: Cars get parked in a

21   garages. It happened here.

22   MR. DREEBEN: Yes, but a car that's parked

23   in a garage does not have a reasonable expectation of

24   privacy as to its location. Anyone can observe --

25   JUSTICE SOTOMAYOR: Neither does the person.

1   MR. DREEBEN: Well --

2   JUSTICE SOTOMAYOR: A person goes home, and

3   their overcoat gets hung on a hanger. What's the

4   difference.

5   MR. DREEBEN: Once the -- once the effect is

6   in the house, under Karo there is an expectation of

7   privacy that cannot be breached without a warrant, and

8   we're not asking the Court to overrule that.

9   JUSTICE SOTOMAYOR: Tell me what the

10   difference between this and a general warrant is? I

11   mean --

12   MR. DREEBEN: A general warrant --

13   JUSTICE SOTOMAYOR: -- what motivated the

14   Fourth Amendment historically was the disapproval, the

15   outrage, that our Founding Fathers experienced with

16   general warrants that permitted police indiscriminately

17   to investigate just on the basis of suspicion, not

18   probable cause, and to invade every possession that the

19   individual had in search of a crime. How is this

20   different --

21   MR. DREEBEN: A warrant authorizes --

22   JUSTICE SOTOMAYOR: -- this kind of

23   surveillance where there's no probable cause, there's

24   not even necessarily reasonable suspicion in --

25   MR. DREEBEN: A warrant authorizes a search.

1 This authorizes the ability to track somebody's

2 movements in a car on a public roadway, a subject as to

3 which this Court said in Knotts that no individual has a

4 reasonable expectation of privacy because when they go

5 out in their car, their car is traveling on public

6 roads. Anyone can look. The police have no obligation

7 to avert their eyes from anything that any member of the

8 public --

9   CHIEF JUSTICE ROBERTS: What if we -- I give

10 you that, that it's in public. Does the reasonable

11 expectation of privacy trump that fact? In other words,

12 if we ask people, do you think it's -- it violates your

13 right to privacy to have this kind of information

14 acquired, and everybody says yes, is it a response that,

15 no, that takes place in public, or is it simply the

16 reasonable expectation of privacy regardless of the fact

17 that it takes place in public?

18   MR. DREEBEN: Well, something that takes

19 place in public isn't inherently off limits to a

20 reasonable expectation of privacy. That's essentially

21 the holding of Katz. You go into a phone booth, you're

22 in public; making your calls within the phone booth is

23 subject to a reasonable expectation of privacy.

24   But this Court, with full awareness of that

25 holding, in Knotts and in Karo recognized that

1   surveillance of a vehicle traveling on the public

2   roadways doesn't fit that description.

3   CHIEF JUSTICE ROBERTS: You can see, though,

4   can't you, that 30 years ago if you asked people does it

5   violate your privacy to be followed by a beeper, the

6   police following you, you might get one answer, while

7   today if you ask people does it violate your right to

8   privacy to know that the police can have a record of

9   every movement you made in the past month, they might

10   see that differently?

11   MR. DREEBEN: They probably would also feel

12   differently about being followed 24/7 by a team of FBI

13   agents, who gain far more information than a GPS device

14   produces. GPS only gives you the approximate location

15   of the car as it drives on the roads --

16   JUSTICE GINSBURG: And the speed as well.

17   MR. DREEBEN: The approximate speed, the

18   location traveled, the -- that -- that is what the GPS

19   provides. It doesn't show you where the car stopped.

20   It doesn't show you who was driving the car. It doesn't

21   show you who was --

22   JUSTICE GINSBURG: An easy way to pick

23   someone up for speeding when you suspect something far

24   worse but have no -- no probable cause.

25   MR. DREEBEN: Well, this Court held in Whren

1   v. United States that when the police have probable

2   cause to stop someone for a traffic violation, they can

3   do that. There are protections --

4   JUSTICE GINSBURG: That was -- that is when

5   the police came upon the violator. But this is -- it's

6   all in a computer. The police can say we want to find

7   out more about X, so consult the database, see if

8   there's an indication that he was ever speeding in the

9   last 28 days.

10   MR. DREEBEN: Justice Ginsburg, it's not

11   very hard for police to follow somebody and find a

12   traffic violation if they want to do that. But to

13   answer in part Justice Breyer's earlier concern about

14   limiting principles, this Court recognized in the Whren

15   decision that, although the Fourth Amendment is not a

16   restriction on discriminatory or arbitrary or oppressive

17   stops that are based on invidious characteristics, the

18   Equal Protection Clause is. The First Amendment also

19   stands as a protection. If this Court believes that

20   there is an excessive chill created by an actual law or

21   universal practice of monitoring people through GPS,

22   there are other constitutional principles that are

23   available.

24   JUSTICE GINSBURG: But the Fourth Amendment

25   protects us against unreasonable searches and seizures.

1 And if I were trying to explain to someone, here's the

2 Fourth Amendment, the Fourth Amendment says -- or it has

3 been interpreted to mean that if I'm on a public bus and

4 the police want to feel my luggage, that's a violation;

5 and yet, this kind of monitoring, installing the GPS and

6 monitoring the person's movement whenever they are

7 outside their house in the car, is not? I mean, it just

8 -- something about it that -- just doesn't parse.

9   MR. DREEBEN: I'm quite sure, Justice

10 Ginsburg, that if you ask citizens whether the police

11 could freely pick up their trash for a month and paw

12 through it, looking for evidence of a crime, or keep a

13 record of every telephone call that they made for the

14 duration and the number that it went through, or conduct

15 intense visual surveillance of them, that citizens would

16 probably also find that to be, in the word that

17 Respondents choose to use --

18   JUSTICE BREYER: But they won't -- they

19 won't and probably couldn't physically.

20   Start with the other end. Start -- what

21 would a democratic society look like if a large number

22 of people did think that the government was tracking

23 their every movement over long periods of time. And

24 once you reject that, you have to have a reason under

25 the Fourth Amendment and a principle. And what I'm

1   looking for is the reason and the principle that would

2   reject that, but wouldn't also reject 24 hours a day for

3   28 days.

4   MR. DREEBEN: I think --

5   JUSTICE BREYER: Do you see where I'm -- and

6   that's what I'm listening very hard to find.

7   MR. DREEBEN: All right. Justice Breyer,

8   two things on that. First of all, I think the

9   line-drawing problems that the Court would create for

10   itself would be intolerable, and better that the Court

11   should address the so-called 1984 scenarios if they come

12   to pass, rather than using this case as a vehicle for

13   doing so.

14   Second, if the Court --

15   JUSTICE SOTOMAYOR: This case is not that

16   vehicle.

17   MR. DREEBEN: If the Court --

18   JUSTICE SOTOMAYOR: The GPS technology today

19   is limited only by the cost of the instrument, which

20   frankly right now is so small that it wouldn't take that

21   much of a budget, local budget, to place a GPS on every

22   car in the nation.

23   MR. DREEBEN: Oh, I think that would be --

24   JUSTICE SOTOMAYOR: Almost every car has it

25   now.

1   MR. DREEBEN: Well, I think it would be

2   virtually impossible to use the kinds of tracking

3   devices that were used in this case on everyone

4   because --

5   JUSTICE SCALIA: Don't we have any

6   legislatures out there that can stop this stuff?

7   MR. DREEBEN: I think that -- Justice

8   Scalia, the legislature is a safeguard, and if the Court

9   believes that there needs to be a Fourth Amendment

10   safeguard as well, we have urged as a fallback position

11   that the Court adopt a reasonable suspicion standard

12   which would allow the police to conduct surveillance of

13   individuals in their movements on public roadways, which

14   they can do visually in any event, and would allow the

15   police to investigate leads and tips that arise under

16   circumstances where there is not probable cause.

17   JUSTICE GINSBURG: Who would be under your

18   test the judge of the reasonable suspicion?

19   MR. DREEBEN: As in most reasonable

20   suspicion cases, it's the police at the front end and

21   it's the courts at the back end if there are motions to

22   suppress evidence. But fundamentally, just as in the

23   pen register example and in the financial records

24   example, if this Court concludes, consistent with its

25   earlier cases, that this is not a search, yet all

1   Americans find it to be an omen of 1984, Congress would

2   stand ready to provide appropriate protection.

3   If I may save the rest of my time for

4   rebuttal.

5   CHIEF JUSTICE ROBERTS: Thank you. Your --

6   our questions have eaten into your rebuttal time. So,

7   we'll give you the full time.

8   Mr. Leckar.

9   ORAL ARGUMENT OF STEPHEN C. LECKAR

10   ON BEHALF OF THE RESPONDENT

11   MR. LECKAR: Thank you, Mr. Chief Justice,

12   and may it please the Court:

13   I want to talk about the one issue that the

14   United States didn't talk about, which is whether this

15   is a seizure. This case can be resolved on a very

16   narrow basis, a very narrow basis: What are the

17   consequences when the police without a warrant install a

18   GPS secretly on the car of any citizen of the United

19   States, and they want to use the evidence gained that

20   way in a criminal trial? Our position is that's a

21   seizure.

22   JUSTICE ALITO: What is the size of this

23   device?

24   MR. LECKAR: I'm sorry, Your Honor?

25   JUSTICE ALITO: What is the size of this

1 device?

2   MR. LECKAR: In -- the record doesn't show

3 in this case, but we know -- we learned last week,

4 Justice Alito, from the NACDL that there's now a GPS on

5 the market that weighs 2 ounces and is the size of a

6 credit card. Think how easy it would be for any law

7 enforcement agent of the 880,000 in the United States to

8 stick one of those on anybody's vehicle.

9   JUSTICE ALITO: And what if it was put on

10 the license place? Would that be a technical trespass?

11 Is that the property of the driver?

12   MR. LECKAR: Well, a license plate, as I

13 understand it, is the property of the State, and driving

14 is a privilege. But it's not a technical trespass in

15 this particular case. Mr. Jones had the --

16   JUSTICE SCALIA: Is that right? I don't own

17 my license plate? I didn't know that. How do you know

18 that?

19   (Laughter.)

20   JUSTICE SCALIA: How do you know that? I

21 paid for my license plate.

22   (Laughter.)

23   JUSTICE KENNEDY: We don't need to get into

24 it, but "Live Free or Die" was spelled on the license

25 plate.

1   (Laughter.)

2   MR. LECKAR: What I'm saying, Justice

3   Kennedy and Justice Scalia, is this: That the issue

4   insofar as the seizure is concerned is, is it

5   meaningful. Everybody agrees here that there is -- that

6   Antoine Jones had the right to control the use of his

7   vehicle. The question is, was the interference a

8   meaningful deprivation of his possessory interest?

9   CHIEF JUSTICE ROBERTS: I didn't -- I didn't

10   hear an answer to Justice Alito's question. What is

11   your position on the placement of the GPS device on the

12   State-owned license plate?

13   MR. LECKAR: They can't do it. They can't

14   do it, Your Honor. It's a seizure.

15   CHIEF JUSTICE ROBERTS: It's a --

16   MR. LECKAR: If -- I'm sorry. If the

17   installation --

18   CHIEF JUSTICE ROBERTS: My understanding is

19   correct that it's the State's license plate they require

20   you to have. So, your trespass theory, it would seem,

21   falls apart with respect to that particular scenario.

22   MR. LECKAR: Well, first of all, Justice --

23   Chief Justice Roberts, my -- you would probably see the

24   GPS, and in that case, you might have --

25   CHIEF JUSTICE ROBERTS: No. It's the size

1   of a credit card. You slip it behind the license plate.

2   MR. LECKAR: In that particular case, what

3   you have done is you have -- the installation of the

4   GPS, it is a seizure. What makes it meaningful is the

5   use of that GPS --

6   JUSTICE SCALIA: Well, this is ridiculous.

7   Look at -- you give the State permission to put the

8   license plate -- to carry -- to have your car carry the

9   State's license plate. You do not give anybody

10   permission to have your car carry a tracking device.

11   MR. LECKAR: That's correct.

12   JUSTICE SCALIA: And whether it's put

13   directly on the car or directly on something that the

14   car is carrying doesn't seem to me to make any

15   difference.

16   CHIEF JUSTICE ROBERTS: I thought it made a

17   difference under your theory, which focused on the

18   question of trespass, because it was attached to an

19   effect owned by somebody else. This is an effect not

20   owned by the individual.

21   MR. LECKAR: That's correct.

22   CHIEF JUSTICE ROBERTS: So, the trespass

23   theory anyway doesn't seem ridiculous to me.

24   MR. LECKAR: But it's an effect, Your Honor.

25   The Fourth Amendment protects effects. It protects

1   people. If you put it on somebody's briefcase, you put

2   it on somebody's car, you have affected their possessory

3   interest. Then the question becomes --

4   JUSTICE KAGAN: Mr. Leckar, I guess I'm not

5   sure I quite understand the argument, because a trespass

6   is accomplished no matter what you put on somebody's car

7   or somebody's overcoat or what have you. You could put

8   a nonworking device in somebody's car, and it would

9   still be a trespass, but surely the same constitutional

10   problem is not raised. So, how do you get from the

11   trespass to the constitutional problem?

12   MR. LECKAR: As I -- thank you, Justice

13   Kagan. As I said moments ago, what makes it meaningful,

14   what makes it a meaningful deprivation of a -- of a

15   possessory interest, is once the GPS gets activated. We

16   look at reality. We follow what Silverman v. --

17   JUSTICE SCALIA: That doesn't make it a

18   seizure. That doesn't make it a seizure. It makes it a

19   search.

20   MR. LECKAR: Your Honor --

21   JUSTICE SCALIA: I mean, you can say that

22   there's a trespass for the purpose of obtaining

23   information, which makes it a search. But I don't see

24   how it's a seizure. A seizure -- you have to bring

25   something within your control. You have to stop the

1   person or stop the vehicle. What has been seized when

2   you -- when you slap a tracking device on a car?

3   MR. LECKAR: What has been seized is

4   Antoine's data. Data is seized that is created by the

5   GPS. Antoine Jones had the right, Your Honor, to

6   control the use of his vehicle. And what the government

7   did was surreptitiously deprive him of the use of

8   that --

9   JUSTICE SCALIA: Do you have any case

10 involving seizure of data floating in the air as opposed

11 to papers?

12   MR. LECKAR: The closest case I could come,

13 Your Honor, would be Silverman, where the Court called a

14 Fourth Amendment violation where the spike mike just

15 touched -- touched the ventilator unit.

16   JUSTICE BREYER: It's not a violation

17 unless, in addition to a search, it is an unreasonable

18 search. And since you already -- and the same is true

19 of seizure, isn't it?

20   MR. LECKAR: That's right.

21   JUSTICE BREYER: So, you already have --

22 everybody agrees it's at least a search. So, what do

23 you care whether there's the -- and there's a case

24 called Karo which says whether it's a trespass doesn't

25 really matter. The question is the reasonableness of

1   it. And that's what I think -- I mean, you can argue

2   trespass as much as you want, but I'll still have in

3   mind is it reasonable.

4   MR. LECKAR: That's right.

5   JUSTICE BREYER: And I think that's the

6   question we've been debating. And I would like to know

7   from you -- what they are saying is that the parade of

8   horribles we can worry with -- worry about when it comes

9   up; the police have many, many people that they suspect

10   of all kinds of things ranging from kidnappings of lost

11   children to terrorism to all kinds of crimes.

12   They're willing to go as far as reasonable

13   suspicion in a pinch. And they say at least with that,

14   you will avoid the 1984 scenario, and you will in fact

15   allow the police to do their work with doing no more

16   than subjecting the person to really good knowledge of

17   where he's going on the open highway. Now, I -- they

18   probably put it better than I did, but I'd appreciate

19   your views on that.

20   MR. LECKAR: Reasonable suspicion, Justice

21   Breyer, is something that the Court has adopted for

22   limited intrusions. And I refer you to the United

23   States v. Place. Every 10 seconds of the day for 28

24   days is by no person's lights a -- a limited intrusion.

25   That said, what -- what happened here, society does not

1 view as reasonable the concept that the United States

2 Government has the right to take a device that enables

3 them to engage in pervasive, limitless, cost-free --

4 cost-free surveillance -- that completely replaces the

5 human equation --

6   CHIEF JUSTICE ROBERTS: How do you know

7 that?

8   JUSTICE KENNEDY: Why does it have to be

9 cost-free? Suppose the police department says: We've

10 got two things; we can put 30 deputies on this route and

11 watch this person, or we can have a device with a

12 warrant. What difference does it make?

13   MR. LECKAR: What happens is the police have

14 the capacity with GPS to engage in grave abuse, grave

15 abuse of individual and group liberties, Your Honor.

16   JUSTICE KENNEDY: But suppose what they got

17 is nothing more than what they would have had if they

18 had 30 deputies staked out along the route. That's all.

19 They'd get the same from 30 deputies. A constitutional

20 violation?

21   MR. LECKAR: Yes, if they use a GPS, Your

22 Honor. Any placement of a GPS on anybody's car or this

23 car --

24   JUSTICE KENNEDY: Well, no. We're assuming

25 that there's no initial trespass, which is a problem in

1   this case.

2   MR. LECKAR: All right.

3   JUSTICE KENNEDY: You're saying it's -- it's

4   the quantity and -- of the information seized and the

5   time over which it's seized. And that's the proposition

6   we're testing. And it seems to me what you're saying is

7   that the police have to use the most inefficient

8   methods.

9   MR. LECKAR: No, Your Honor. I'm not

10   asking --

11   JUSTICE KENNEDY: I'm fully aware of the

12   1984 ministry of love, ministry of -- of peace problem.

13   But this -- your argument, it seems to me, has no

14   principled distinction from the case that I put.

15   MR. LECKAR: I think I can help you with

16   that. We're not asking to make the police less

17   efficient than they were before GPS came into effect.

18   We're simply saying that the use of GPS has grave

19   potential -- grave threats of abuse to privacy; that

20   people have an expectation, Justice Kennedy, that their

21   neighbor is not going to use their car to track them.

22   People have an -- under Rakas -- and I refer the Court

23   to footnote 12 in the Rakas case. Antoine Jones had

24   control of that car. Control of that -- of the vehicle

25   meant that he had a reasonable expectation that society

1   is prepared to view as objectively reasonable. The

2   government --

3   JUSTICE GINSBURG: But he -- he wouldn't be

4   protected against a surveillance camera that could get

5   information. And is this really different in kind from

6   the surveillance camera?

7   MR. LECKAR: Yes. First of all, you have a

8   physical invasion. That's Bond v. United States. You

9   have an invasion of his possessory interest, placement

10   on the car. Physical invasion of a possessory interest,

11   Justice Ginsburg, is more significant. It has always

12   been viewed by this Court as more invasive than mere

13   video -- mere visual surveillance.

14   And even with a camera, it depends on the

15   type of the video camera. We're not saying that the

16   police are prohibited from having individual video

17   cameras or several video cameras to surveil people.

18   What we're saying here is this device, this device that

19   enables limitless, pervasive, indiscriminate --

20   JUSTICE KAGAN: But what is the difference

21   really? I'm told -- maybe this is wrong, but I'm told

22   that if somebody goes to London, almost every place that

23   person goes there's a camera taking pictures, so that

24   the police can put together snapshots of where everybody

25   is all the time. So, why is this different from that?

1   MR. LECKAR: It's pretty scary. I wouldn't

2 want to live in London under those circumstances.

3   JUSTICE SCALIA: Well, it must be

4 unconstitutional if it's scary.

5   (Laughter.)

6   JUSTICE SCALIA: I mean, what is it, the

7 scary provision of what article?

8   JUSTICE BREYER: And, in fact, those cameras

9 in London actually enabled them, if you watched, I got

10 the impression, to track the bomber who was going to

11 blow up the airport in Glasgow and to stop him before he

12 did. So, there are many people who will say that that

13 kind of surveillance is worthwhile, and there are others

14 like you who will say, no, that's a bad thing. But that

15 isn't the issue exactly in front of us.

16   MR. LECKAR: That's correct, Your Honor.

17 What we have here is a physical --

18   JUSTICE BREYER: And what Justice Kagan

19 wanted to know is why not.

20   MR. LECKAR: Because you have a physical

21 invasion of property.

22   JUSTICE BREYER: Oh, my goodness. Here, I I

23 can read -- sorry, I just had that expression because

24 I'm reading: "The existence of a physical trespass is

25 only marginally relevant to the question of whether the

37

1   Fourth Amendment has been violated, however, for an

2   actual trespass is neither necessary nor sufficient to

3   establish a constitutional violation." That's Karo.

4   So, you can talk if you'd like. It's your

5   hour. But I would really be very interested in hearing

6   you on the assumption that the real issue here is

7   whether this is reasonable.

8   MR. LECKAR: It's not, Your Honor. This is

9   not a Karo case. First of all, in Karo the installation

10   was essentially consented to. You took -- the package

11   came in by virtue of somebody who was working for the

12   government. So, the installation was not unlike this

13   case -- was unlike this case, where it was surreptitious

14   and directly engaged in by a government agent.

15   JUSTICE KENNEDY: But you're --

16   JUSTICE SOTOMAYOR: Counsel --

17   JUSTICE KENNEDY: You're mixing -- you're

18   mixing two things. You're the one that -- I thought

19   your position was that the initial trespass is not

20   important. That's the narrow way to decide the issue.

21   You don't want us to do that. So, now we ask you about

22   Karo, and you say, oh, well, there was a trespass. So,

23   that's -- that's not -- that's not a responsive answer.

24   MR. LECKAR: Well, but technology, as you

25   observed, Justice Kennedy, is dramatically different

1   with GPS than was present in Karo.

2   JUSTICE SOTOMAYOR: But it's going to be

3   dramatically different in the next step. There are now

4   satellites that look down and can hone in on your home

5   on a block in a neighborhood. I don't see that far in

6   the future when those cameras are going to be able to

7   show you the entire world and let you track somebody on

8   the camera from place to place.

9   MR. LECKAR: Well --

10   JUSTICE SOTOMAYOR: So, if -- give us a

11   theory. Is that okay for the police to access those

12   cameras and look at you moving from place to place? And

13   if that's okay, then why is this not okay? What is your

14   theory of your case?

15   MR. LECKAR: Our theory, Justice Sotomayor,

16   with respect to video camera, if they're targeting an

17   individual -- this presents a grave question. It's a

18   question that need not be resolved given this case. But

19   if the Court wanted to address that question, once the

20   police target somebody, they want to engage in

21   individualized targeting for use of a pervasive network

22   of cameras, and GPS is like a million cameras. That's

23   the -- the New York Court of Appeals pointed that out,

24   and this --

25   JUSTICE SOTOMAYOR: I think there's about 28

1   satellites up there, but okay.

2   MR. LECKAR: All right. It's 28 cameras,

3   but the equivalent of a camera tracking you every street

4   corner you're on everywhere. Once you have

5   individualized suspicion like that, if a court wanted to

6   deal with it, I believe you would have to have a

7   warrant.

8   JUSTICE SCALIA: Mr. Leckar, your -- all of

9   this discussion -- you're going into it, but the

10   questioning leads you into it -- it seems to me leaps

11   over the difficult part of your case. The issue before

12   us is not -- not in the abstract whether this police

13   conduct is unreasonable. The unreasonableness

14   requirement or the unreasonableness prohibition does not

15   take effect unless there has been a search. And our

16   cases have said that there's no search when -- when you

17   are in public and where everything that you do is open

18   to -- to the view of people. That's the hard question

19   in the case, not whether this is unreasonable. That's

20   not what the Fourth Amendment says, the police can't do

21   anything that's unreasonable. They can do a lot of

22   stuff that's unreasonable without violating the Fourth

23   Amendment, and the -- the protection against that is the

24   legislature.

25   But you have to establish, if you're going

1   to go with Katz, that there has been an invasion of --

2   of privacy when all that -- all that this is showing is

3   where the car is going on the public streets, where the

4   police could have had round-the-clock surveillance on

5   this individual for a whole month or for 2 months or for

6   3 months, and that would not have violated anything,

7   would it?

8   MR. LECKAR: No.

9   JUSTICE SCALIA: Why? Because there's no

10   invasion of privacy. So, why is this an invasion of

11   privacy?

12   MR. LECKAR: Because it is -- it is a

13   complete robotic substitute. It's not a -- it's not a

14   tail. And interestingly enough, Your Honor. The

15   government only cited in its brief one instance of a

16   24-hour surveillance for all of 2 days. What you have

17   here, Justice Scalia, is -- I'm going to refer to your

18   dissent.

19   JUSTICE SCALIA: A hundred times zero equals

20   zero. If -- if there is no invasion of privacy for 1

21   day, there's no invasion of privacy for a hundred days.

22   Now, it may be unreasonable police conduct, and we can

23   handle that with laws. But if there's no invasion of

24   privacy, no matter how many days you do it, there's no

25   invasion of privacy.

1   MR. LECKAR: Justice Scalia, what -- I'm

2   going to refer to your dissent along with Justice Breyer

3   in Bond v. United States. A GPS in your car is like --

4   or anybody's car, is like -- without a warrant, is like

5   having an -- it makes you unable to get rid of an

6   uninvited stranger. That's what it is. Now, what --

7   JUSTICE SCALIA: So is a tail. So is a tail

8   when the police surveil -- surveil you for -- for a

9   month.

10   MR. LECKAR: The question we have to answer

11   in this case, Justice Scalia, is this: A tail -- if

12   they can -- if they want a tail, if they want to commit

13   the resources, that's fine. But what a GPS does, it

14   involves -- it allows the government to engage in

15   unlimited surveillance through a machine, through a

16   machine robotically. Nobody is even involved monitoring

17   it. The record in this case showed that many times the

18   police officers just let -- let the machine go on.

19   JUSTICE ALITO: Well, where would you draw

20   the line? Suppose that the GPS was used only to track

21   somebody's movements for 1 day or for 12 hours or for 3

22   hours. Would that be all right?

23   MR. LECKAR: Our position, Justice Alito, is

24   no circumstances should a GPS be allowed to be put on

25   somebody's car. But we recognize --

1   JUSTICE ALITO: Put aside -- put aside the

2   trespass question.

3   MR. LECKAR: I'm not addressing it purely as

4   a trespass. Our view is the -- the use of a GPS as a

5   search in and of itself should be -- is -- should be

6   viewed as unreasonable. But if the Court were

7   uncomfortable with that, if the Court had concerns with

8   that, we suggested in our brief some -- some

9   possibilities: One day, one trip, one person per day or

10   trip, or perhaps when you use it exactly as a beeper,

11   when you follow it, when you actually physically follow

12   it.

13   JUSTICE ALITO: Well, that sounds like a

14   legislative line. But what is the difference between

15   following somebody for 12 hours, let's say, and

16   monitoring their movements on a GPS for 12 hours? You

17   would say that the latter -- your first argument is

18   there's a problem with the latter but not with the

19   former. But what would the reason for that be?

20   MR. LECKAR: Because it's an unreasonable

21   invasion of privacy, Your Honor.

22   JUSTICE ALITO: There's no more -- what --

23   what is the difference in terms of one's privacy whether

24   you're followed by a police officer for 12 hours and you

25   don't see the officer or whether you're monitored by GPS

43

1 for 12 hours?

2   MR. LECKAR: Because -- because what you

3 have here is society does not expect that the police,

4 the human element, would be taken out of -- would be

5 taken out of the surveillance factor.

6   JUSTICE ALITO: You know, I don't know what

7 society expects, and I think it's changing. Technology

8 is changing people's expectations of privacy.

9   Suppose we look forward 10 years, and maybe

10 10 years from now 90 percent of the population will be

11 using social networking sites, and they will have on

12 average 500 friends, and they will have allowed their

13 friends to monitor their location 24 hours a day, 365

14 days a year, through the use of their cell phones. Then

15 -- what would the expectation of privacy be then?

16   MR. LECKAR: Well, the use of a cell phone,

17 there are two ways of looking at it. As Justice Kennedy

18 observed in Quon, cell phones are becoming so

19 ubiquitous, there may be privacy interests.

20   Our view is that currently the use of a cell

21 phone, that's a voluntary act. People nowadays

22 understand that there are ways to monitor by way of a

23 cell phone.

24   But I started my oral argument with this

25 basic precept, Justice Alito: This case does not

1   require us to decide those issues of emerging

2   technology. It's a simple case at the core: Should the

3   police be allowed surreptitiously to put these machines

4   on people's cars and either -- call it a seizure, call

5   it a search, call it a search and seizure in the words

6   of Katz, or call it a Fourth Amendment violation.

7   JUSTICE ALITO: Well, that -- maybe that's a

8   good way to decide the case. But I just wonder, would

9   Mr. Jones or anybody else be really upset if they found

10 that the police had sneaked up to their car and put an

11 inert device the size of a credit card on the underside

12 of the car? What would they say about that, other than

13 the fact that the police are wasting money doing this?

14   MR. LECKAR: If it were nothing more than a

15 note, say, or even a bumper sticker like you get at

16 South of the Border, probably nothing, but this --

17   JUSTICE ALITO: You don't even see it. It's

18 just a little wafer. They put it under the car. It

19 does nothing.

20   MR. LECKAR: It's a little wafer that's got

21 an enormous capacity. Look at the --

22   JUSTICE ALITO: No, but this one does

23 nothing, and you -- so you would go -- you would sue --

24 you would bring a trespass action.

25   MR. LECKAR: No, heavens, no, Your Honor.

1   If it did nothing, first, it wouldn't be a Fourth

2   Amendment problem.

3   JUSTICE ALITO: So, what's you're concerned

4   about is not this little thing that's put on your car.

5   It's not this invasion of your property interest. It's

6   the monitoring that takes place.

7   MR. LECKAR: The monitoring makes it

8   meaningful. Putting it on enables them to make --

9   JUSTICE KAGAN: But to ask Justice Alito's

10 question in a different way, suppose that the police

11 could do this without ever committing the trespass.

12 Suppose that in the future all cars are going to have

13 GPS tracking systems, and the police could essentially

14 hack into such a system without committing the trespass.

15 Would the constitutional issue we face be any different?

16   MR. LECKAR: If, as I assume, that's because

17 of manufacturers doing it, or because Congress has

18 legislated it, Justice Kagan? Under either

19 circumstance, people would know. They would know that

20 their privacy rights had been taken away. Whether that

21 would be possible to be -- to go through Congress, I

22 seriously doubt, but people would know.

23   In this particular case, Antoine Jones had

24 no idea whatsoever that his possessory interest in that

25 property was about to be deprived by the government in a

1 meaningful way to allow them to get information they

2 couldn't have otherwise have gotten.

3   Justice Alito, what happens here, GPS

4 produces unique data. When you and I drive down the

5 street, we don't emit GPS data. What makes GPS data

6 meaningful is the act -- is the use and placement of the

7 GPS device, that was in this case, in this case,

8 unconsented to by Antoine Jones, unknowingly. And the

9 government knew that. That's why they went and did it

10 surreptitiously, because they couldn't get it any other

11 way.

12   JUSTICE KENNEDY: Lots of communities have,

13 including Washington, cameras on -- at intersections on

14 stop lights. Suppose the police suspected someone of

15 criminal activity, and they had a computer capacity to

16 take pictures of all the intersections that he drove

17 through at different times of day, and they checked his

18 movements and his routes for 5 days. Would that be

19 lawful?

20   MR. LECKAR: I think that would be

21 allowable, Your Honor. I don't think --

22   JUSTICE KENNEDY: You think it would be?

23   MR. LECKAR: I think that would be

24 permissible, Your Honor. First of all, you don't have

25 an invasion of -- you don't have a physical intrusion,

1   unlike this case. People nowadays --

2   JUSTICE KENNEDY: You have -- you have a

3   targeted invasion. It's over a period of time. It's

4   over a long -- it's over a wide space, and it seems to

5   me that -- it seems to me you have to answer my question

6   "yes" to be consistent with what you've said earlier.

7   MR. LECKAR: No, Your Honor. As I said

8   earlier, you can have an -- you can have an occasional

9   video camera out there. People understand nowadays that

10   there may be video cameras out in public space. The --

11   but we don't have any -- society does not expect -- view

12   it as reasonable to have the equivalent of a million

13   video cameras following you everywhere you go.

14   A few video cameras, people know. They've

15   cropped -- they've cropped up, and they've been

16   accepted. But this is a horse of an entirely different

17   color. This is a small device that enables the

18   government to get information of a vast amount of --

19   JUSTICE SOTOMAYOR: What an --

20   MR. LECKAR: The camera is one site, one --

21   JUSTICE SOTOMAYOR: What an unworkable rule

22   with no -- tethered to no principle.

23   MR. LECKAR: I'm sorry.

24   JUSTICE SOTOMAYOR: What an unworkable rule

25   tethered to no principle. A thousand video cameras may

1   or may not be okay, depending on how large the city is?

2   MR. LECKAR: No, Justice Sotomayor. I think

3   the workable rule and the simplest rule that should be

4   adopted is this: I think the Court should say to the

5   law enforcement agency you came here looking for a rule;

6   we're going to give you a rule. If you want to use GPS

7   devices, get a warrant, absent exigent circumstances or

8   another recognized exception to the Fourth Amendment;

9   because of their capacity for -- to collect data that

10   you couldn't realistically get, because of the

11   vanishingly low cost, because of their pervasive nature,

12   that you should get a warrant any time -- you must get a

13   warrant any time you're going to attach a GPS to a

14   citizen's effect or to a citizen's person.

15   CHIEF JUSTICE ROBERTS: Well, that gets back

16   to Justice Scalia's question, which is you've got to

17   determine that there has been a search first before you

18   impose the warrant requirement. And it seems to me that

19   your -- the warrant requirement applies only with

20   respect to searches, right?

21   MR. LECKAR: And seizures.

22   CHIEF JUSTICE ROBERTS: Okay. And seizures.

23   So, while it might seem like a good idea to impose the

24   requirement on this particular technological device, you

25   still have to establish that it's a search.

1   MR. LECKAR: But if you know, if you the

2   police agents know -- this is the deliberative process.

3   These devices aren't used for just quick one-off

4   surveillance. They're used to track people over time,

5   as witness this case, every 10 seconds of the day for 28

6   days.

7   If you know you're going to do that and you

8   know, Justice Roberts, that this device -- this device

9   has an amazingly invasive power and capacity. If you

10   know you're going to do that and you're a law

11   enforcement agent, then you do what they did originally.

12   You get a warrant.

13   CHIEF JUSTICE ROBERTS: Now, we pushed your

14   -- we pushed your friend to the limits of his theory.

15   Your theory, I take it, would apply if you're going to

16   do it for 3 minutes, right? Where's the car? You push

17   a button; it's 3 minutes. You say that's still a Fourth

18   Amendment violation?

19   MR. LECKAR: Yes --

20   CHIEF JUSTICE ROBERTS: Okay. Well, then

21   don't talk to me about how long they're going to be

22   doing it or all the information. We have to test the

23   validity of your theory on the proposition that it

24   violates the Fourth Amendment to do this for 3 minutes.

25   MR. LECKAR: I -- I think it does, Your

1 Honor, because of the -- society does not expect --

2 society views it as objectively reasonable not to

3 expect --

4   CHIEF JUSTICE ROBERTS: You have said that

5 several times. How do we tell? I mean, I don't know

6 what society expects. I suppose if you ask people do

7 you think it's a violation of privacy for the police to

8 do this for no reason for a month, maybe they'd come out

9 one way. If you asked the people do you think the

10 police have to have probable cause before they monitor

11 for 5 minutes the movements of somebody they think is

12 going to set off a huge bomb, maybe you get a different

13 answer.

14   MR. LECKAR: You look to -- you look to the

15 common law. You look to well-established case law. You

16 look to statutes in several jurisdictions. I think

17 there are seven or eight that said this sort of practice

18 should be prohibited.

19   JUSTICE SCALIA: Excellent. Yes. Of

20 course, a legislature can take care of this, whether or

21 not there is an invasion of privacy. And they can pick

22 5 days out of the air. You can't do it for any more

23 than 5 days, or you can't do it to more than -- than 50

24 people at a time. They can take care of all of that

25 stuff.

1   We can't do that in a decision under the --

2   under the Fourth Amendment.

3   MR. LECKAR: We have --

4   JUSTICE SCALIA: Why isn't this precisely

5   the kind of a problem that you should rely upon

6   legislatures to take care of?

7   MR. LECKAR: That's the same -- that's the

8   same -- same problem that the United States advanced

9   before this Court in the United States v. District

10   Court; give it to Congress. And what this Court there

11   did, it held a Fourth Amendment violation so far as

12   domestic security is concerned and gave Congress

13   suggestions. In this particular case, I could probably

14   give you 535 reasons why not to go to Congress --

15   (Laughter.)

16   MR. LECKAR: -- but let me suggest

17   something, Justice Scalia. What happened was the United

18   States has adopted a shifting position. They came to

19   this Court, and they said we want a workable rule; give

20   us a workable rule. You either overrule the D.C.

21   Circuit, which you should not do, or give us a workable

22   rule. Now they've said in their brief, oh, let's take

23   it to the legislature. They can't have it both ways.

24   JUSTICE BREYER: Can you take it to Congress

25   the other way? I mean, can you say that a general

1 search of this kind is not constitutional under the

2 Fourth Amendment, but should Congress pick out a subset

3 thereof, say, the -- terrorism or where there is

4 reasonable cause or like the FISA court or special

5 courts to issue special kinds of warrants, that that's a

6 different question which we could decide at a later

7 time?

8   That's a negative way of -- I mean, that way

9 favors you in the result, but I've -- I've been looking

10 for -- if there is a way of going to Congress to create

11 the situations where they can do it, rather than the

12 situations where they can't.

13   MR. LECKAR: Justice Breyer, that was

14 exactly what Congress -- what happened when the foreign

15 intelligence surveillance courts were created. You hit

16 it right on the nail. All this Court has to do is

17 decide the narrow question before it, which I've

18 articulated several times.

19   JUSTICE SCALIA: I don't see why it's any of

20 Congress's business if it's a -- if it's a purely

21 intrastate operation. Congress can control police

22 practices that don't violate the Fourth Amendment

23 throughout the country? I mean, maybe interstate,

24 interstate beepers and interstate tracking devices, yes,

25 but so long as you track within -- within the State

1 isn't that okay?

2   MR. LECKAR: No, Your Honor. First of all,

3 let me refer to Chief -- to Justice Frankfurter's

4 comments a long time ago in Watts v. Indiana: Justices

5 are not ignorant of the law, of what they know to be

6 true as men and women.

7   But other legislatures would follow

8 Congress. But what we have here -- what we have here is

9 a live case of controversy in which Antoine Jones'

10 control of his vehicle was usurped and his car was

11 converted into an electronic GPS transceiver serving the

12 government.

13   So, that case is here, and it -- it needs to

14 be decided. One doesn't need to address technologies

15 that aren't here before the Court today. You could; we

16 could venture down that road. We could discuss drone

17 surveillance. We could discuss balloon surveillance and

18 other types of surveillance. But we don't have to.

19 It's a narrow --

20   JUSTICE ALITO: There was a warrant -- there

21 was a warrant in this case. This is a puzzling aspect

22 of the case to me, and maybe there -- it's irrelevant

23 for present purposes. There was a warrant, and the two

24 violations are violations of a statute and a rule,

25 neither of which may carry an exclusionary rule sanction

1   with them or an exclusionary rule penalty with them.

2   It's not clear at all that there was a

3   violation of the Fourth Amendment. So, it's a little

4   strange that we're deciding whether a warrantless search

5   here would have been unconstitutional, when there was a

6   warrant.

7   MR. LECKAR: They had the choice. They

8   could have easily -- they could have gone back to the

9   district judge and said -- given the district judge

10   reasons --

11   JUSTICE ALITO: No, that's not my point.

12   The point is that the violation of the 10-day rule and

13   the violation of the statutory prohibition on -- or

14   maybe it's in the rule -- the prohibition on the judge

15   in the District ordering the installation only in the

16   District are not Fourth Amendment requirements.

17   MR. LECKAR: No. That's correct, Your

18   Honor, but what we have -- what we have here is a

19   warrantless intrusion. When -- when the warrant --

20   JUSTICE ALITO: It is not a warrantless

21   intrusion; there was a warrant.

22   MR. LECKAR: But the warrant was not in

23   effect. At the -- at the time the -- the GPS was

24   placed, Justice Alito, there was no warrant. There's a

25   case this Court decided in the --

1   JUSTICE GINSBURG: I think that's conceded

2   by both sides, and that's accepted by both sides. The

3   warrant expired. There was no warrant. The government

4   certainly could have gone back and said, judge, we

5   didn't make it; we need a little more time; give us 10

6   more days.

7   MR. LECKAR: They could -- they could

8   conceivably have gone back there and explained to the

9   district judge why they couldn't have installed it in

10   that period of time. The --

11   JUSTICE ALITO: I think if you look at the

12   lower court case law, you will find that a violation of

13   the 10-day rule is not necessarily a violation of the

14   Fourth Amendment. And --

15   MR. LECKAR: I understand that.

16   JUSTICE ALITO: -- it doesn't vitiate the

17   warrant. The warrant doesn't necessarily dissolve or

18   evaporate when the 10 days expire.

19   MR. LECKAR: Your --

20   JUSTICE ALITO: Maybe those cases are wrong.

21   MR. LECKAR: There's a 1920 Supreme Court

22   decision decided during the Prohibition era that

23   specifically said that when a warrant expires, there is

24   no warrant. When the 10-day rule in that case had

25   expired, there's no warrant. We have a warrantless

1   intrusion here. The government didn't have to do a

2   warrantless intrusion. I ask --

3   CHIEF JUSTICE ROBERTS: Thank you, counsel.

4   MR. LECKAR: -- the Court to affirm.

5   CHIEF JUSTICE ROBERTS: Mr. Dreeben, 5

6   minutes.

7   REBUTTAL ARGUMENT OF MICHAEL R. DREEBEN

8   ON BEHALF OF THE PETITIONER

9   MR. DREEBEN: Mr. Chief Justice, advancing

10   technology cuts in two directions. Technological

11   advances can make the police more efficient at what they

12   do through some of the examples that were discussed

13   today: Cameras, airplanes, beepers, GPS. At the same

14   time, technology and how it's used can change our

15   expectations of privacy in the ways that Justice Alito

16   was alluding to. Today perhaps GPS can be portrayed as

17   a 1984-type invasion, but as people use GPS in their

18   lives and for other purposes, our expectations of

19   privacy surrounding our location may also change. For

20   that --

21   JUSTICE KAGAN: Mr. Dreeben, that -- that

22   seems too much to me. I mean, if you think about this,

23   and you think about a little robotic device following

24   you around 24 hours a day anyplace you go that's not

25   your home, reporting in all your movements to the

 1 police, to investigative authorities, the notion that we

 2 don't have an expectation of privacy in that, the notion

 3 that we don't think that our privacy interests would be

 4 violated by this robotic device, I'm -- I'm not sure how

 5 one can say that.

 6   MR. DREEBEN: Justice Kagan, I think the

 7 Court should decide that case when it comes to it. This

 8 was my fundamental point: This case does not involve

 9 universal surveillance of every member of this Court or

10 every member of the society. It involves limited

11 surveillance of somebody who was suspected of drug

12 activity --

13   JUSTICE KENNEDY: You probably haven't had

14 the opportunity to go into the cases. A hypothetical.

15 Suppose exactly these facts, only the police aren't

16 involved. A neighbor does it to another neighbor in

17 order to see where that neighbor is going, and when he

18 finds out, he tells his wife and other neighbors. Do

19 you think that in most States, that would be an invasion

20 of privacy?

21   MR. DREEBEN: I'm willing to assume that it

22 might be, Justice Kennedy, but I don't think that this

23 Court measures the metes and bounds of the Fourth

24 Amendment by State law invasions of privacy. The Court

25 has --

1   JUSTICE KENNEDY: We measure it by

2   expectations of privacy under the Katz test if -- that

3   may or may not be controlling.

4   MR. DREEBEN: Yes, but in Greenwood, the

5   Court dealt with a case where California had outlawed

6   taking somebody's garbage, and this Court said that did

7   not define an expectation of privacy for purposes of the

8   Fourth Amendment --

9   JUSTICE KENNEDY: It found that there was no

10   expectation of privacy.

11   MR. DREEBEN: Correct.

12   JUSTICE KENNEDY: I am asking you about this

13   case, whether there would be an expectation of

14   privacy --

15   MR. DREEBEN: Oh --

16   JUSTICE KENNEDY: -- as a general matter

17   under tort law.

18   MR. DREEBEN: No, I don't think so. And --

19   and the fact that something may be a tort for a private

20   person doesn't mean that it's a problem for the police

21   to do it. For example, in the Dow Chemical case, where

22   the police used -- EPA in that case actually used

23   cameras to surveil an industrial plant. There was a

24   claim that it would have violated trade secret law for

25   anybody else to do that. And the Court accepted that

1   and said tort law doesn't define the boundaries of the

2   Fourth Amendment.

3   In Knotts, the Court was very careful to

4   reserve the possibility of 24-hour surveillance of every

5   citizen in their persons and in their residences, saying

6   we haven't seen that kind of abuse. If that kind of

7   abuse comes up, the legislature is the best-equipped to

8   deal with it, if in fact our society regards that as an

9   unreasonable restriction on --

10   JUSTICE SOTOMAYOR: Do you have any idea of

11 how many GPS devices are being used by Federal

12 Government agencies and State law enforcement officials?

13   MR. DREEBEN: The Federal Government I can

14 speak to, and it's in the low thousands annually. It's

15 not a massive universal use of an investigative

16 technique. The FBI requires that there be some

17 reasonable basis for using GPS before it installs it.

18 And as a result, this is a technique that basically

19 supplements visual surveillance rather than supplanting

20 it all together.

21   There was visual surveillance that was

22 directed at Respondent. The GPS allowed it to be more

23 effective. As Justice Kennedy and, I think, Justice

24 Scalia's hypotheticals illustrated, Respondent is

25 essentially conceding that around-the-clock visual

1   surveillance through teams of agents would not have

2   invaded any expectation of privacy.

3   This Court said in Knotts that police

4   efficiency has never been equated with police

5   unconstitutionality. The fact that GPS makes it more

6   efficient for the police to put a tail on somebody

7   invades no additional expectation of privacy that they

8   otherwise would have had. The technology doesn't make

9   something private that was previously public. When we

10 go out in our cars, our cars have driver's licenses that

11 we carry. We have license plates on the car. These are

12 for the purpose of identification --

13   JUSTICE SOTOMAYOR: You don't seriously

14 argue that there isn't a possessory interest in who puts

15 something on your car and who -- like a -- a sign of

16 some sort.

17   MR. DREEBEN: Oh, I think there would

18 probably be some sort of State law possessory interest

19 -- Mr. Chief Justice, may I finish? But there is no

20 seizure for the very reason that Justice Breyer

21 described under the Katz case. This Court has said that

22 trespass is neither necessary nor sufficient to create a

23 Fourth Amendment violation.

24   CHIEF JUSTICE ROBERTS: Thank you,

25 Mr. Dreeben, counsel.

1   The case is submitted.

2   (Whereupon at 11:10 a.m., the case in the

3   above-entitled matter was submitted.)

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

25:5,7 32:16
32:21 33:5,21
37:8,18,22
42:2 52:24
53:13 61:20
Breyer's 16:6
23:13
bribing 14:22
brief 13:11
18:21 41:15
43:8 52:22
briefcase 31:1
briefs 13:17
bring 31:24
45:24
broader 11:21
broke 4:12
budget 25:21,21
buildings 5:17
bumper 45:15
bus 24:3
business 53:20
button 4:22
50:17

————————
C
————————
C 1:18 2:1,6 3:1
27:9
California 59:5
call 4:20 17:17
17:19,22 24:13
45:4,4,5,6
called 32:13,24
calls 12:4,19
21:22
camera 36:4,6
36:14,15,23
39:8,16 40:3
48:9,20
cameras 36:17
36:17 37:8
39:6,12,22,22
40:2 47:13
48:10,13,14,25
57:13 59:23
campaign 14:23
capacity 34:14

45:21 47:15
49:9 50:9
car 3:18 4:1,10
4:13,19,23
5:11 7:5,5,6,7
7:9,10 16:5
17:9,9,11,13
19:22 21:2,5,5
22:15,19,20
24:7 25:22,24
27:18 30:8,10
30:13,14 31:2
31:6,8 32:2
34:22,23 35:21
35:24 36:10
41:3 42:3,4,25
45:10,12,18
46:4 50:16
54:10 61:11,15
card 16:15 28:6
30:1 45:11
care 32:23 51:20
51:24 52:6
careful 60:3
carried 17:20
carry 30:8,8,10
54:25 61:11
carrying 30:14
cars 9:20 10:6
12:19 19:20
45:4 46:12
61:10,10
case 3:4 7:20
8:13,21,23,24
9:7,13 10:17
10:19 11:5,19
12:1,5,8 13:1
13:15,21,25
14:20,23 15:10
16:17 17:6,13
19:12 25:12,15
26:3 27:15
28:3,15 29:24
30:2 32:9,12
32:23 35:1,14
35:23 38:9,13
38:13 39:14,18

40:11,19 42:11
42:17 44:25
45:2,8 46:23
47:7,7 48:1
50:5 51:15
52:13 54:9,13
54:21,22 55:25
56:12,24 58:7
58:8 59:5,13
59:21,22 61:21
62:1,2
cases 10:1,20
11:20 26:20,25
40:16 56:20
58:14
cause 17:17 18:7
19:16 20:18,23
22:24 23:2
26:16 51:10
53:4
cell 18:22 44:14
44:16,18,20,23
certain 4:11
certainly 12:25
56:4
change 4:18
11:17,19 57:14
57:19
changed 11:12
changes 8:20
changing 44:7,8
characteristics
23:17
checked 47:17
Chemical 59:21
Chief 3:3,9,24
4:7,17 5:2 9:18
9:23 10:4,8
15:16,23,25
16:9 18:3,8
21:9 22:3 27:5
27:11 29:9,15
29:18,23,25
30:16,22 34:6
49:15,22 50:13
50:20 51:4
54:3 57:3,5,9

61:19,24
children 33:11
chill 23:20
chip 18:18
chloroform 4:16
choice 55:7
choices 19:7
choose 24:17
Circuit 52:21
circumstance
46:19
circumstances
19:15 26:16
37:2 42:24
49:7
cited 41:15
citizen 13:3
15:11 18:19
27:18 60:5
citizens 24:10,15
citizen's 49:14
49:14
city 49:1
claim 59:24
Clause 23:18
clear 55:2
clearly 8:21
clock 10:10
closest 32:12
clothing 19:17
coat 5:7
collect 49:9
color 48:17
come 25:11
32:12 51:8
comes 33:8 58:7
60:7
comments 54:4
commit 42:12
committed 8:25
committing
11:10 46:11,14
common 51:15
communities
47:12
company 17:21
complete 41:13

completely 34:4
computer 11:23
18:18 23:6
47:15
computers 11:1
13:6
concede 16:6
conceded 56:1
conceding 60:25
conceivably
56:8
concept 6:25 7:2
34:1
concern 12:25
23:13
concerned 29:4
46:3 52:12
concerns 43:7
concludes 26:24
conduct 14:15
16:24 24:14
26:12 40:13
41:22
confronted 12:5
Congress 27:1
46:17,21 52:10
52:12,14,24
53:2,10,14,21
54:8
Congress's
53:20
consent 7:20,23
consented 7:19
38:10
consequences
27:17
considerably
19:11
consistent 26:24
48:6
consists 11:3
Constitution
10:7
constitutional
10:23 23:22
31:9,11 34:19
38:3 46:15

53:1
consult 23:7
contain 7:25
contributions
14:23
control 29:6
31:25 32:6
35:24,24 53:21
54:10
controlling 59:3
controversy
54:9
convenience 6:2
conversations
6:14 12:18
converted 54:11
core 45:2
corner 40:4
correct 7:11
15:23 29:19
30:11,21 37:16
55:17 59:11
cost 25:19 49:11
cost-free 34:3,4
34:9
counsel 38:16
57:3 61:25
country 53:23
course 13:24
51:20
court 1:1,12
3:10,12,19 5:4
5:9 6:9 8:4,8
8:16 9:3,15,22
10:1 11:24
12:2,4,21
13:20 14:20
15:4,9 16:16
19:13 20:8
21:3,24 22:25
23:14,19 25:9
25:10,14,17
26:8,11,24
27:12 32:13
33:21 35:22
36:12 39:19,23
40:5 43:6,7

49:4 52:9,10
52:10,19 53:4
53:16 54:15
55:25 56:12,21
57:4 58:7,9,23
58:24 59:5,6
59:25 60:3
61:3,21
courts 15:1
26:21 53:5,15
Court's 3:11
10:1 17:23
cover 8:12
create 25:9
53:10 61:22
created 23:20
32:4 53:15
credible 18:1
credit 16:15
28:6 30:1
45:11
crime 20:19
24:12
crimes 33:11
criminal 27:20
47:15
criterion 6:17
cropped 48:15
48:15
crossed 4:10 9:1
crucial 4:7 5:4
currently 44:20
cuts 57:10

D

D 3:1
data 4:23 12:2
32:4,4,10 47:4
47:5,5 49:9
database 23:7
day 13:3,8 16:7
25:2 33:23
41:21 42:21
43:9,9 44:13
47:17 50:5
57:24
days 14:3 16:7

16:19,20 23:9
25:3 33:24
41:16,21,24
44:14 47:18
50:6 51:22,23
56:6,18
deal 11:11 40:6
60:8
dealer 15:13
dealt 59:5
debating 33:6
decide 10:5
38:20 45:1,8
53:6,17 58:7
decided 11:5
54:14 55:25
56:22
deciding 10:17
55:4
decision 3:11
17:23 23:15
52:1 56:22
define 59:7 60:1
deliberative
50:2
democratic
24:21
deny 7:11
department
1:16 34:9
depend 15:18,19
depending 49:1
depends 36:14
deprivation
29:8 31:14
deprive 32:7
deprived 46:25
deputies 34:10
34:18,19
Deputy 1:15
described 61:21
description 22:2
desirable 15:3
detailed-soun...
18:1
detected 4:15
detection 4:10

determine 49:17
determining
5:12
device 5:16,20
7:4,21 9:19
10:5 12:14
22:13 27:23
28:1 29:11
30:10 31:8
32:2 34:2,11
36:18,18 45:11
47:7 48:17
49:24 50:8,8
57:23 58:4
devices 26:3
49:7 50:3
53:24 60:11
dial 12:3
dichotomy 3:13
Die 28:24
difference 8:10
13:4 16:10
20:4,10 30:15
30:17 34:12
36:20 43:14,23
different 4:4,6
4:25 18:9
20:20 36:5,25
38:25 39:3
46:10,15 47:17
48:16 51:12
53:6
differently
22:10,12
difficult 40:11
difficulty 10:24
17:4,7
directed 60:22
directions 57:10
directly 30:13
30:13 38:14
disapproval
20:14
discover 4:14
discriminatory
23:16
discuss 54:16,17

discussed 57:12
discussion 40:9
dissent 12:6
41:18 42:2
dissolve 56:17
distance 4:2
distinct 9:4
distinction 8:22
9:16 35:14
distinguished
5:11
district 52:9
55:9,9,15,16
56:9
doctrine 8:24
doing 25:13
33:15 45:13
46:17 50:22
domestic 52:12
doubt 8:25 11:7
46:22
Dow 59:21
dramatic 11:19
dramatically
4:25 38:25
39:3
dramatizing
13:12
draw 14:9,23
16:1 42:19
Dreeben 1:15
2:3,9 3:6,7,9
4:6 5:1,8,18
6:3,6 7:13,23
8:4,8,16,20 9:9
9:12,22,25
10:8 11:18
12:16 13:18
14:8 15:5,9,23
16:4,13,17
17:6 18:6,10
19:5,10,22
20:1,5,12,21
20:25 21:18
22:11,17,25
23:10 24:9
25:4,7,17,23

26:1,7,19 57:5
57:7,9,21 58:6
58:21 59:4,11
59:15,18 60:13
61:17,25
drive 47:4
driver 4:11
28:11
driver's 61:10
drives 22:15
driving 10:2
12:24 22:20
28:13
drone 54:16
drove 47:16
drug 15:12
58:11
duration 24:14
D.C 1:8,16,18
16:21 52:20

E

E 2:1 3:1,1
earlier 23:13
26:25 48:6,8
easily 55:8
easy 22:22 28:6
eaten 27:6
effect 20:5 30:19
30:19,24 35:17
40:15 49:14
55:23
effective 60:23
effects 6:12,15
7:7,7 30:25
efficiency 61:4
efficient 35:17
57:11 61:6
eight 51:17
either 5:20 45:4
46:18 52:20
electronic 12:14
17:1 54:11
element 44:4
elevators 5:16
emerging 45:1
emit 18:23 47:5

enabled 37:9
enables 34:2
36:19 46:8
48:17
enclave 3:14
enclaves 12:20
encountering
17:4
enforcement
11:9 14:17
28:7 49:5
50:11 60:12
engage 34:3,14
39:20 42:14
engaged 38:14
enjoyed 10:22
enormous 11:2
14:13 45:21
enter 18:7 19:18
entered 9:1
entering 17:9
entire 39:7
entirely 48:16
entitled 9:21
envision 11:21
EPA 59:22
Equal 23:18
equally 7:14
10:8
equals 41:19
equated 61:4
equation 34:5
equivalent 40:3
48:12
era 56:22
espoused 18:21
ESQ 1:15,18 2:3
2:6,9
essentially 12:9
21:20 38:10
46:13 60:25
establish 38:3
40:25 49:25
established 6:17
ether 7:15
evaporate 56:18
event 5:18 26:14

everybody
21:14 29:5
32:22 36:24
everybody's
16:14
evidence 24:12
26:22 27:19
exactly 13:19
37:15 43:10
53:14 58:15
example 4:18
14:22 17:18
26:23,24 59:21
examples 57:12
Excellent 51:19
exception 49:8
excessive 23:20
exclusionary
54:25 55:1
exigent 19:15
49:7
existed 7:1
existence 37:24
expand 8:18
expect 17:25
44:3 48:11
51:1,3
expectation 3:22
5:14 6:20 10:2
11:16 17:12
19:2,19,23
20:6 21:4,11
21:16,20,23
35:20,25 44:15
58:2 59:7,10
59:13 61:2,7
expectations
44:8 57:15,18
59:2
expects 44:7
51:6
experienced
20:15
expire 56:18
expired 56:3,25
expires 56:23
explain 24:1

explained 56:8
expose 5:1 11:13
exposed 5:2
expression
37:23
extraordinarily
13:21
extremely 19:17
eyes 21:7

F

face 46:15
fact 4:7 7:21
16:24 21:11,16
33:14 37:8
45:13 59:19
60:8 61:5
factor 44:5
facts 58:15
failed 15:15
fair 11:14
fallback 26:10
fallible 13:6
falls 29:21
far 22:13,23
33:12 39:5
52:11
farther 19:11
Fathers 20:15
favors 53:9
FBI 10:9 17:25
22:12 60:16
feared 4:9
Federal 60:11
60:13
feel 22:11 24:4
fences 9:2
fields 8:24 9:14
financial 14:14
26:23
find 4:22,24
23:6,11 24:16
25:6 27:1
56:12
finds 58:18
fine 42:13
finish 61:19

first 3:4 6:8
13:18 14:8
23:18 25:8
29:22 36:7
38:9 43:17
46:1 47:24
49:17 54:2
FISA 53:4
fit 22:2
floating 32:10
Florida 17:24
focused 9:16
30:17
follow 4:2,19
10:6,11 13:8
18:14,19,24
23:11 31:16
43:11,11 54:7
followed 16:19
22:5,12 43:24
following 4:1,5
5:11 15:12
22:6 43:15
48:13 57:23
footnote 35:23
foreign 7:25
53:14
former 43:19
forward 7:10
44:9
found 45:9 59:9
Founding 20:15
four 14:1,2
Fourth 3:13,16
3:22 6:10,10
6:22,25 7:2
8:10,15,22 9:5
9:15,17 12:21
16:8 20:14
23:15,24 24:2
24:2,25 26:9
30:25 32:14
38:1 40:20,22
45:6 46:1 49:8
50:17,24 52:2
52:11 53:2,22
55:3,16 56:14

58:23 59:8
60:2 61:23
Frankfurter's
54:3
frankly 25:20
Free 28:24
freely 24:11
friend 50:14
friends 44:12,13
front 26:20
37:15
full 4:13 21:24
27:7
fully 35:11
fundamental
58:8
fundamentally
26:22
future 11:7 39:6
46:12
futuristic 13:16

_____
G
_____

G 3:1
gain 22:13
gained 27:19
game 11:14
garage 19:23
garages 19:21
garbage 16:14
59:6
gather 10:13
gathering 10:25
general 1:15
20:10,12,16
52:25 59:16
getting 17:4,7
Ginsburg 12:7
16:17 17:8
22:16,22 23:4
23:10,24 24:10
26:17 36:3,11
56:1
give 6:7 15:20
17:18 21:9
27:7 30:7,9
39:10 49:6

52:10,14,19,21
56:5
given 39:18 55:9
gives 16:11
22:14
Glasgow 37:11
go 13:20 14:24
18:5,20,24
21:4,21 33:12
41:1 42:18
45:23 46:21
48:13 52:14
57:24 58:14
61:10
goes 19:11 20:2
36:22,23
going 6:23 14:4
17:20 33:17
35:21 37:10
39:2,6 40:9,25
41:3,17 42:2
46:12 49:6,13
50:7,10,15,21
51:12 53:10
58:17
good 4:17 33:16
45:8 49:23
goodness 37:22
gotten 16:23
47:2
government
7:25 13:2 17:3
24:22 32:6
34:2 36:2
38:12,14 41:15
42:14 46:25
47:9 48:18
54:12 56:3
57:1 60:12,13
government's
12:10
GPS 4:5 9:19
10:5 22:13,14
22:18 23:21
24:5 25:18,21
27:18 28:4
29:11,24 30:4

30:5 31:15
32:5 34:14,21
34:22 35:17,18
39:1,22 42:3
42:13,20,24
43:4,16,25
46:13 47:3,5,5
47:7 49:6,13
54:11 55:23
57:13,16,17
60:11,17,22
61:5
grave 34:14,14
35:18,19 39:17
greater 4:2 10:2
Greenwood
59:4
ground 10:17
11:5
group 34:15
guess 31:4
guidance 14:17
14:20

_____
H
_____

hack 46:14
handle 41:23
hanger 20:3
happened 13:5
19:21 33:25
52:17 53:14
happens 13:9
34:13 47:3
Happy 6:6
hard 23:11 25:6
40:18
hear 3:3 29:10
hearing 38:5
heart 10:18
heavens 45:25
held 6:9 9:3 12:2
16:16 22:25
52:11
helicopter 4:15
4:21
help 35:15
helps 4:1

high 19:17
highway 33:17
historically
20:14
hit 53:15
hold 3:20
holding 21:21
21:25
home 3:15 12:12
20:2 39:4
57:25
homes 12:12
hone 39:4
Honor 6:6 27:24
29:14 30:24
31:20 32:5,13
34:15,22 35:9
37:16 38:8
41:14 43:21
45:25 47:21,24
48:7 51:1 54:2
55:18
horribles 33:8
horse 48:16
hour 4:13 38:5
hours 13:3,8
25:2 42:21,22
43:15,16,24
44:1,13 57:24
house 12:15
18:5,7 20:6
24:7
houses 6:12,15
huge 51:12
human 13:8
34:5 44:4
hundred 41:19
41:21
hung 20:3
hypothetical
58:14
hypotheticals
60:24

_____
I
_____

idea 46:24 49:23
60:10

identification
61:12
ignorant 54:5
ignore 17:25
ignored 9:2
illustrated 60:24
illustrates 8:21
implicate 5:20
5:22
important 17:14
38:20
impose 49:18,23
impossible 26:2
impression
37:10
including 47:13
indefinitely
18:20
Indiana 54:4
indicated 7:22
indication 23:8
indiscriminate
36:19
indiscriminat...
20:16
individual 10:10
19:16 20:19
21:3 30:20
34:15 36:16
39:17 41:5
individualized
39:21 40:5
individuals
18:13 26:13
individual's
10:11
industrial 59:23
inefficient 35:7
inert 45:11
information 4:4
6:19 10:25
11:2,4,13,22
14:13 16:11
18:1 21:13
22:13 31:23
35:4 36:5 47:1
48:18 50:22

infringed 3:22
inherently 21:19
initial 34:25
  38:19
inside 3:15
  12:15
insofar 29:4
install 17:10
  27:17
installation 5:20
  29:17 30:3
  38:9,12 55:15
installed 6:1 7:4
  7:19,25 56:9
installing 24:5
installs 60:17
instance 41:15
instances 11:8
instrument
  25:19
integrity 19:7
intelligence
  53:15
intense 24:15
interest 13:12
  29:8 31:3,15
  36:9,10 46:5
  46:24 61:14,18
interested 38:5
interestingly
  41:14
interests 8:11,12
  9:3,4 44:19
  58:3
interference
  29:7
interferences
  8:12
interior 12:19
interpreted 24:3
intersections
  47:13,16
interstate 53:23
  53:24,24
intolerable
  25:10
intrastate 53:21

intrusion 33:24
  47:25 55:19,21
  57:1,2
intrusions 33:22
intrusive 16:2
invade 19:7
  20:18
invaded 61:2
invades 61:7
invasion 6:18
  36:8,9,10
  37:21 41:1,10
  41:10,20,21,23
  41:25 43:21
  46:5 47:25
  48:3 51:21
  57:17 58:19
invasions 58:24
invasive 36:12
  50:9
investigate
  18:12 20:17
  26:15
investigative
  14:12 58:1
  60:15
invidious 23:17
involve 15:11
  58:8
involved 10:15
  12:8 14:1,1,2
  42:16 58:16
involves 14:3
  15:12 42:14
  58:10
involving 10:20
  32:10
irrelevant 54:22
issue 10:15
  27:13 29:3
  37:15 38:6,20
  40:11 46:15
  53:5
issues 45:1
item 7:25

———————
J
———————

Jones 1:6 3:5
  28:15 29:6
  32:5 35:23
  45:9 46:23
  47:8 54:9
journey 14:1,3,5
journeys 14:2,2
judge 14:22
  26:18 55:9,9
  55:14 56:4,9
jurisdictions
  51:16
Justice 1:16 3:3
  3:9,24 4:7,17
  5:2,5,8,15,18
  5:23 6:3,7 7:18
  7:22 8:2,6,14
  8:17,20 9:6,10
  9:13,18,23
  10:4,9,14
  11:18 12:5,7
  12:23 13:18,24
  14:19 15:6,16
  15:24,25 16:6
  16:9,17 17:7
  18:3,8,16,17
  19:6,10,20,25
  20:2,9,13,22
  21:9 22:3,16
  22:22 23:4,10
  23:13,24 24:9
  24:18 25:5,7
  25:15,18,24
  26:5,7,17 27:5
  27:11,22,25
  28:4,9,16,20
  28:23 29:2,3,9
  29:10,15,18,22
  29:23,25 30:6
  30:12,16,22
  31:4,12,17,21
  32:9,16,21
  33:5,20 34:6,8
  34:16,24 35:3
  35:11,20 36:3
  36:11,20 37:3
  37:6,8,18,18

  37:22 38:15,16
  38:17,25 39:2
  39:10,15,25
  40:8 41:9,17
  41:19 42:1,2,7
  42:11,19,23
  43:1,13,22
  44:6,17,25
  45:7,17,22
  46:3,9,9,18
  47:3,12,22
  48:2,19,21,24
  49:2,15,16,22
  50:8,13,20
  51:4,19 52:4
  52:17,24 53:13
  53:19 54:3,20
  55:11,20,24
  56:1,11,16,20
  57:3,5,9,15,21
  58:6,13,22
  59:1,9,12,16
  60:10,23,23
  61:13,19,20,24
Justices 9:22
  10:1 54:4
J.L 17:24

———————
K
———————

Kagan 31:4,13
  36:20 37:18
  46:9,18 57:21
  58:6
Karo 5:9,10
  7:15 8:9 11:20
  11:25 19:13
  20:6 21:25
  32:24 38:3,9,9
  38:22 39:1
Katz 3:11 6:17
  21:21 41:1
  45:6 59:2
  61:21
keep 17:14
  24:12
Kennedy 5:5,8
  5:15,19,23

  7:18 28:23
  29:3 34:8,16
  34:24 35:3,11
  35:20 38:15,17
  38:25 44:17
  47:12,22 48:2
  58:13,22 59:1
  59:9,12,16
  60:23
Kennedy's
  18:17
kept 6:20
kidnappings
  33:10
kind 14:20 17:2
  17:15 20:22
  21:13 24:5
  36:5 37:13
  52:5 53:1 60:6
  60:6
kinds 26:2 33:10
  33:11 53:5
knew 47:9
Knotts 3:19,24
  4:7,10 11:20
  11:25 13:20,25
  15:10 21:3,25
  60:3 61:3
know 14:23,25
  15:7 22:8 28:3
  28:17,17,20
  33:6 34:6
  37:19 44:6,6
  46:19,19,22
  48:14 50:1,2,7
  50:8,10 51:5
  54:5
knowledge
  33:16

———————
L
———————

large 24:21 49:1
Laughter 6:5
  9:24 28:19,22
  29:1 37:5
  52:15
law 9:1,4,17,17

11:8 14:16,17
23:20 28:6
49:5 50:10
51:15,15 54:5
56:12 58:24
59:17,24 60:1
60:12 61:18
lawful 47:19
laws 41:23
leads 26:15
40:10
leaps 40:10
learned 28:3
leave 12:12
14:25
Leckar 1:18 2:6
27:8,9,11,24
28:2,12 29:2
29:13,16,22
30:2,11,21,24
31:4,12,20
32:3,12,20
33:4,20 34:13
34:21 35:2,9
35:15 36:7
37:1,16,20
38:8,24 39:9
39:15 40:2,8
41:8,12 42:1
42:10,23 43:3
43:20 44:2,16
45:14,20,25
46:7,16 47:20
47:23 48:7,20
48:23 49:2,21
50:1,19,25
51:14 52:3,7
52:16 53:13
54:2 55:7,17
55:22 56:7,15
56:19,21 57:4
legal 10:23
legislated 46:18
legislation 12:1
legislative 43:14
legislature 26:8
40:24 51:20

52:23 60:7
legislatures 26:6
52:6 54:7
lengths 12:4
letter 3:15
letters 12:20
let's 14:1,2
43:15 52:22
liberties 34:15
license 28:10,12
28:17,21,24
29:12,19 30:1
30:8,9 61:11
licenses 61:10
lights 33:24
47:14
likelihood 19:18
limit 13:25 14:7
14:24 15:7
limited 15:21
25:19 33:22,24
58:10
limiting 23:14
limitless 34:3
36:19
limits 16:1,19
19:15 21:19
50:14
line 14:4,9 19:4
42:20 43:14
line-drawing
25:9
listen 4:19
listening 25:6
little 6:7 16:10
45:18,20 46:4
55:3 56:5
57:23
live 28:24 37:2
54:9
lives 57:18
local 9:1 25:21
location 5:12
7:10 17:11
19:24 22:14,18
44:13 57:19
London 36:22

37:2,9
long 6:23 12:14
16:2 18:25
24:23 48:4
50:21 53:25
54:4
look 4:23 14:14
21:6 24:21
30:7 31:16
39:4,12 44:9
45:21 51:14,14
51:15,16 56:11
looking 16:14
24:12 25:1
44:17 49:5
53:9
lose 4:20
lost 4:12 33:10
lot 4:4,18 40:21
Lots 47:12
love 35:12
low 49:11 60:14
lower 15:1 56:12
luggage 24:4

—————————

M

machine 42:15
42:16,18
machines 13:9
45:3
magistrate 16:3
making 19:9
21:22
manual 17:1
manufacturers
46:17
man's 5:7
marginally
37:25
market 28:5
Maryland 16:22
massive 60:15
matter 1:11 31:6
32:25 41:24
59:16 62:3
mean 8:3 12:11
12:13 20:11

24:3,7 31:21
33:1 37:6 51:5
52:25 53:8,23
57:22 59:20
meaning 6:21
meaningful 8:11
29:5,8 30:4
31:13,14 46:8
47:1,6
means 18:11
meant 7:3 35:25
measure 59:1
measures 5:16
58:23
member 21:7
58:9,10
memories 13:5
men 54:6
mentioned 6:17
mere 36:12,13
metes 58:23
method 15:4
methods 35:8
MICHAEL 1:15
2:3,9 3:7 57:7
mike 32:14
million 39:22
48:12
mind 17:15 33:3
ministry 35:12
35:12
Minnesota 4:10
minutes 50:16
50:17,24 51:11
57:6
mixing 38:17,18
moments 31:13
money 45:13
monitor 11:9
18:22 44:13,22
51:10
monitored 9:20
12:11 16:7
19:1 43:25
monitoring
12:17,18 13:2
13:5 17:9,11

17:13,18 19:14
19:16 23:21
24:5,6 42:16
43:16 46:6,7
month 4:23,24
9:20 10:6 14:3
14:5,10 15:14
16:15 22:9
24:11 41:5
42:9 51:8
months 41:5,6
morning 3:4
mosaic 16:11
mosque 17:21
motions 26:21
motivated 20:13
movement 13:3
19:1 22:9 24:6
24:23
movements 3:18
5:22 9:20
10:11 11:9
12:17 16:5
21:2 26:13
42:21 43:16
47:18 51:11
57:25
moving 15:17
39:12

—————————

N

N 2:1,1 3:1
NACDL 28:4
nail 53:16
narrow 7:2
27:16,16 38:20
53:17 54:19
narrowed 8:14
narrows 8:18
nation 25:22
nature 49:11
near 11:7
necessarily 15:3
20:24 56:13,17
necessary 17:10
38:2 61:22
need 28:23

39:18 54:14
56:5
needs 26:9 54:13
negative 53:8
neighbor 35:21
58:16,16,17
neighborhood
39:5
neighbors 58:18
neither 18:6
19:25 38:2
54:25 61:22
network 39:21
networking
44:11
never 61:4
new 6:17 10:20
39:23
nonworking
31:8
normal 16:1
note 45:15
notion 58:1,2
November 1:9
nowadays 44:21
48:1,9
number 24:14
24:21
numbers 12:3

O

O 2:1 3:1
object 5:13
objectively 36:1
51:2
obligation 21:6
observe 19:24
observed 11:3
38:25 44:18
obtained 11:15
obtaining 6:19
31:22
obtains 7:10
occasional 48:8
occasionally
13:9
officer 43:24,25

officers 4:9
14:11,11 42:18
officials 60:12
oh 5:15 25:23
37:22 38:22
52:22 59:15
61:17
okay 12:15
14:16 18:18
39:11,13,13
40:1 49:1,22
50:20 54:1
Oliver 8:23
omen 27:1
once 7:24 13:15
20:5,5 24:24
31:15 39:19
40:4
one's 43:23
one-off 50:3
open 8:24 9:14
33:17 40:17
operation 53:21
opportunity
58:14
opposed 32:10
oppressive
23:16
oral 1:11 2:2,5
3:7 27:9 44:24
order 17:10
58:17
ordering 55:15
original 6:21
originally 6:25
7:3 50:11
ounces 28:5
outer 14:24
outlawed 59:5
outrage 20:15
outside 24:7
overcoat 5:7
18:19 20:3
31:7
overly 13:13
overrule 6:23
19:13 20:8

52:20
owned 30:19,20
owner 7:4,6,18
7:20,24

P

P 3:1
package 38:10
packages 12:20
PAGE 2:2
paid 28:21
painted 13:16
papers 6:12,15
32:11
parade 33:7
parked 19:20,22
parse 24:8
part 23:13 40:11
particular 10:17
28:15 29:21
30:2 46:23
49:24 52:13
particularly
11:19
party 12:7
pass 25:12
paw 24:11
peace 35:12
pen 12:2,8 14:13
16:13 26:23
penalty 55:1
people 6:11
10:22 11:2,13
12:24 13:8
17:21 21:12
22:4,7 23:21
24:22 31:1
33:9 35:20,22
36:17 37:12
40:18 44:21
46:19,22 48:1
48:9,14 50:4
51:6,9,24
57:17
people's 11:9
44:8 45:4
percent 44:10

period 15:14,20
48:3 56:10
periods 24:23
permissible
47:24
permission
16:23 30:7,10
permit 19:14
permitted 20:16
person 3:13 5:13
6:19 18:22
19:1,2,25 20:2
32:1 33:16
34:11 36:23
43:9 49:14
59:20
persons 6:12,14
60:5
person's 24:6
33:24
pervasive 34:3
36:19 39:21
49:11
Petitioner 1:4
1:17 2:4,10 3:8
57:8
phone 17:19
18:22 21:21,22
44:16,21,23
phones 44:14,18
physical 36:8,10
37:17,20,24
47:25
physically 24:19
43:11
pick 18:24 22:22
24:11 51:21
53:2
picked 6:14
pictures 36:23
47:16
piece 18:1
pinch 33:13
place 5:13 19:18
21:15,17,19
25:21 28:10
33:23 36:22

39:8,8,12,12
46:6
placed 55:24
placement 29:11
34:22 36:9
47:6
plant 59:23
plate 28:12,17
28:21,25 29:12
29:19 30:1,8,9
plates 61:11
please 3:10
27:12
plus 19:16
point 5:24 12:13
14:7 55:11,12
58:8
pointed 39:23
police 4:12 8:25
12:9 13:2
14:11,11 16:20
16:23 17:16,19
18:10,23 20:16
21:6 22:6,8
23:1,5,6,11
24:4,10 26:12
26:15,20 27:17
33:9,15 34:9
34:13 35:7,16
36:16,24 39:11
39:20 40:12,20
41:4,22 42:8
42:18 43:24
44:3 45:3,10
45:13 46:10,13
47:14 50:2
51:7,10 53:21
57:11 58:1,15
59:20,22 61:3
61:4,6
pool 18:13
population
44:10
portrayed 57:16
poses 19:17
position 12:10
19:12,12 26:10

27:20 29:11
38:19 42:23
52:18
possession 20:18
possessions 19:3
possessory 8:12
29:8 31:2,15
36:9,10 46:24
61:14,18
possibilities
43:9
possibility 5:11
60:4
possible 11:7,8
11:21 46:21
potential 13:22
35:19
potentially
10:17
power 50:9
practice 16:25
23:21 51:17
practices 53:22
precept 44:25
precisely 52:4
prepared 36:1
present 39:1
54:23
presented 10:19
10:19 13:19
presents 39:17
preserve 3:14
pretty 37:1
prevent 13:2
previously 61:9
pre-computer
10:21
pre-Internet
10:21
principal 17:15
principle 3:20
5:4 14:15
24:25 25:1
48:22,25
principled 35:14
principles 11:25
23:14,22

privacy 3:23
5:14 6:18,24
8:11,17 10:21
10:22 11:16
17:12 19:19,24
20:7 21:4,11
21:13,16,20,23
22:5,8 35:19
41:2,10,11,20
41:21,24,25
43:21,23 44:8
44:15,19 46:20
51:7,21 57:15
57:19 58:2,3
58:20,24 59:2
59:7,10,14
61:2,7
private 3:14,15
6:20 12:20
19:14 59:19
61:9
privilege 28:14
probable 17:17
18:7 19:16
20:18,23 22:24
23:1 26:16
51:10
probably 5:8
22:11 24:16,19
29:23 33:18
45:16 52:13
58:13 61:18
problem 10:7,18
17:2 31:10,11
34:25 35:12
43:18 46:2
52:5,8 59:20
problems 25:9
process 50:2
produce 13:10
14:13
produces 22:14
47:4
prohibited
36:16 51:18
prohibition
40:14 55:13,14

56:22
prologue 6:8
property 7:21
28:11,13 37:21
46:5,25
proposition 35:5
50:23
protect 8:11
14:4
protected 9:3,4
9:14 36:4
protection 3:17
8:23 12:21
13:14 23:18,19
27:2 40:23
protections
10:23,24 23:3
protects 23:25
30:25,25
provide 17:22
27:2
provides 22:19
provision 37:7
public 3:18,21
5:3,12,16,17
5:21 10:2,12
11:5,10,13,22
12:17 13:3
16:5 17:13
21:2,5,8,10,15
21:17,19,22
22:1 24:3
26:13 40:17
41:3 48:10
61:9
pull 16:14
pulls 14:14
purely 43:3
53:20
purpose 8:10
31:22 61:12
purposes 54:23
57:18 59:7
push 4:22 50:16
pushed 50:13,14
put 5:6 9:19
10:5,9 11:23

18:12,18 28:9
30:7,12 31:1,1
31:6,7 33:18
34:10 35:14
36:24 42:24
43:1,1 45:3,10
45:18 46:4
61:6
puts 61:14
Putting 46:8
puzzling 54:21

———— **Q** ————
quantity 35:4
question 5:19
6:8 12:10,24
16:6 18:17
29:7,10 30:18
31:3 32:25
33:6 37:25
39:17,18,19
40:18 42:10
43:2 46:10
48:5 49:16
53:6,17
questioning
40:10
questions 27:6
quick 50:3
quite 7:1 24:9
31:5
Quon 44:18

———— **R** ————
R 1:15 2:3,9 3:1
3:7 57:7
radio 4:15 7:16
raise 18:15
raised 31:10
Rakas 35:22,23
ranging 33:10
rarely 13:7
rationale 5:6
8:18 9:7,9,13
read 37:23
reading 37:24
ready 27:2

reaffirmed 8:24
real 11:17 38:6
realistically
49:10
reality 31:16
really 10:15
19:4,8 32:25
33:16 36:5,21
38:5 45:9
reason 5:9 15:21
24:24 25:1
43:19 51:8
61:20
reasonable 5:13
6:19 11:16
17:12,23 19:2
19:19,23 20:24
21:4,10,16,20
21:23 26:11,18
26:19 33:3,12
33:20 34:1
35:25 36:1
38:7 48:12
51:2 53:4
60:17
reasonableness
32:25
reasons 52:14
55:10
rebuttal 2:8
27:4,6 57:7
received 16:24
receiver 4:14
recognize 42:25
recognized 3:12
12:22 21:25
23:14 49:8
record 22:8
24:13 28:2
42:17
records 14:14
26:23
refer 33:22
35:22 41:17
42:2 54:3
regard 11:17
regardless 21:16

regards 60:8
register 12:2,8
  16:13 26:23
registers 14:14
reject 24:24
  25:2,2
relevant 37:25
rely 52:5
remedy 11:24
  12:1
rendering 7:6
replaces 34:4
reporting 57:25
require 29:19
  45:1
requirement
  40:14 49:18,19
  49:24
requirements
  55:16
requires 60:16
reservations
  5:25
reserve 60:4
residence 19:14
residences 60:5
resolved 27:15
  39:18
resources 42:13
respect 29:21
  39:16 49:20
respects 8:19
Respondent
  1:19 2:7 13:23
  27:10 60:22,24
Respondents
  24:17
response 21:14
responsive
  38:23
rest 27:3
restriction
  23:16 60:9
result 10:23,24
  53:9 60:18
reveals 3:17
reversed 6:16

review 15:1
rid 42:5
ridiculous 30:6
  30:23
right 15:22 18:8
  21:13 22:7
  25:7,20 28:16
  29:6 32:5,20
  33:4 34:2 35:2
  40:2 42:22
  49:20 50:16
  53:16
rights 46:20
road 54:16
roads 21:6 22:15
roadway 3:18
  16:5 21:2
roadways 3:22
  5:12 10:2 22:2
  26:13
Roberts 3:3,24
  4:17 9:18,23
  10:4 15:16,25
  16:9 18:3,8
  21:9 22:3 27:5
  29:9,15,18,23
  29:25 30:16,22
  34:6 49:15,22
  50:8,13,20
  51:4 57:3,5
  61:24
robotic 41:13
  57:23 58:4
robotically
  42:16
round-the-clock
  41:4
route 34:10,18
routes 47:18
rule 18:9 48:21
  48:24 49:3,3,5
  49:6 52:19,20
  52:22 54:24,25
  55:1,12,14
  56:13,24

————————
S
————————

S 2:1 3:1
safeguard 26:8
  26:10
sanction 54:25
satellites 39:4
  40:1
save 27:3
saying 14:6 15:7
  29:2 33:7 35:3
  35:6,18 36:15
  36:18 60:5
says 6:11 14:16
  21:14 24:2
  32:24 34:9
  40:20
Scalia 6:3,7 7:22
  8:2,6,14,17,20
  9:6,10,13 26:5
  26:8 28:16,20
  29:3 30:6,12
  31:17,21 32:9
  37:3,6 40:8
  41:9,17,19
  42:1,7,11
  51:19 52:4,17
  53:19
Scalia's 49:16
  60:24
scary 37:1,4,7
scenario 13:16
  29:21 33:14
scenarios 25:11
search 5:21 7:8
  7:9 9:11,12,19
  11:14 16:2,8
  16:24 20:19,25
  26:25 31:19,23
  32:17,18,22
  40:15,16 43:5
  45:5,5 49:17
  49:25 53:1
  55:4
searches 6:13
  16:16 23:25
  49:20
Second 25:14
seconds 33:23

50:5
secret 59:24
secretly 27:18
secure 6:11 7:6
  12:12
security 52:12
see 19:8 22:3,10
  23:7 25:5
  29:23 31:23
  39:5 43:25
  45:17 53:19
  58:17
seeing 16:10,11
seeks 3:14
seen 60:6
seized 32:1,3,4
  35:4,5
seizure 5:21,22
  7:8 11:14
  27:15,21 29:4
  29:14 30:4
  31:18,18,24,24
  32:10,19 45:4
  45:5 61:20
seizures 6:13
  23:25 49:21,22
sends 13:7
sense 19:7
serious 5:19,24
seriously 46:22
  61:13
serving 54:11
set 51:12
seven 51:17
share 12:25
shifting 52:18
short 14:5
show 22:19,20
  22:21 28:2
  39:7
showed 42:17
showing 41:2
shows 4:8
sides 56:2,2
sign 61:15
signals 18:23
significant

36:11
signs 9:2
Silverman 31:16
  32:13
simple 11:1 45:2
simplest 49:3
simply 4:8 10:24
  21:15 35:18
single 14:1
sit 4:21
site 48:20
sites 44:11
situation 17:17
  18:9,11
situations 16:1
  53:11,12
size 27:22,25
  28:5 29:25
  45:11
slap 32:2
slight 13:15
slightly 4:2
slip 30:1
small 17:21
  25:20 48:17
smartphones
  18:23
snapshots 36:24
sneaked 45:10
sneaky 8:6,7
social 44:11
society 24:21
  33:25 35:25
  44:3,7 48:11
  51:1,2,6 58:10
  60:8
Solicitor 1:15
somebody 5:22
  7:16 23:11
  30:19 36:22
  38:11 39:7,20
  43:15 51:11
  58:11 61:6
somebody's
  12:17 18:4,19
  21:1 31:1,2,6,7
  31:8 42:21,25

59:6
sorry 27:24
29:16 37:23
48:23
sort 51:17 61:16
61:18
sorts 18:12
Sotomayor
18:16 19:6,10
19:20,25 20:2
20:9,13,22
25:15,18,24
38:16 39:2,10
39:15,25 48:19
48:21,24 49:2
60:10 61:13
sounds 13:10,13
43:13
South 45:16
so-called 25:11
space 48:4,10
speak 60:14
special 5:15 53:4
53:5
specifically 5:10
9:16 56:23
speed 22:16,17
speeding 22:23
23:8
spell 16:3
spelled 28:24
spike 32:14
sport 5:7
staked 34:18
stand 27:2
standard 14:10
14:25 26:11
stands 23:19
Start 24:20,20
started 16:18
44:24
State 28:13 30:7
53:25 58:24
60:12 61:18
statement 16:15
States 1:1,3,12
3:4,12,19 5:10

5:10 7:15 8:23
13:4 15:12
19:13 23:1
27:14,19 28:7
33:23 34:1
36:8 42:3 52:8
52:9,18 58:19
State's 29:19
30:9
State-owned
29:12
station 4:21
statute 54:24
statutes 51:16
statutory 55:13
step 39:3
STEPHEN 1:18
2:6 27:9
Stewart's 12:5
stick 28:8
sticker 45:15
stop 23:2 26:6
31:25 32:1
37:11 47:14
stopped 22:19
stops 23:17
strange 55:4
stranger 42:6
street 40:3 47:5
streets 5:16
10:12 11:4,10
17:13 41:3
strong 15:13
stuff 26:6 40:22
51:25
subject 3:16
21:2,23
subjecting 33:16
submitted 62:1
62:3
subset 53:2
substitute 41:13
suddenly 13:10
sue 45:23
sufficient 38:2
61:22
suggest 52:16

suggested 43:8
suggesting 15:8
15:9 18:17
suggestion 14:9
suggestions
52:13
supplanting
60:19
supplements
60:19
suppose 34:9,16
42:20 44:9
46:10,12 47:14
51:6 58:15
supposed 16:21
suppress 26:22
Supreme 1:1,12
56:21
sure 24:9 31:5
58:4
surely 31:9
surreptitious
38:13
surreptitiously
5:6 7:22 32:7
45:3 47:10
surrounding
57:19
surveil 36:17
42:8,8 59:23
surveillance
3:21,25 4:5,9
4:12 10:10
14:15 15:11
17:1,3,16
20:23 22:1
24:15 26:12
34:4 36:4,6,13
37:13 41:4,16
42:15 44:5
50:4 53:15
54:17,17,18
58:9,11 60:4
60:19,21 61:1
suspect 22:23
33:9
suspected 15:12

47:14 58:11
suspicion 15:13
15:18 17:23
18:14 20:17,24
26:11,18,20
33:13,20 40:5
system 46:14
systems 11:23
46:13

———————
T
———————

T 2:1,1
tail 41:14 42:7,7
42:11,12 61:6
take 16:25 18:18
25:20 34:2
40:15 47:16
50:15 51:20,24
52:6,22,24
taken 44:4,5
46:20
takes 21:15,17
21:18 46:6
talk 27:13,14
38:4 50:21
talking 12:16,18
16:4,9
target 39:20
targeted 48:3
targeting 39:16
39:21
team 10:9 22:12
teams 18:12
61:1
technical 7:13
7:14 8:9,13
10:16 11:6,10
28:10,14
technique 14:21
60:16,18
techniques
14:12
technological
49:24 57:10
technologies
54:14
technology 4:3,6

4:18 10:20
11:22 13:21
15:15 25:18
38:24 44:7
45:2 57:10,14
61:8
telephone 12:3,8
12:19 24:13
tell 20:9 51:5
tells 58:18
terms 43:23
terrorism 33:11
53:3
test 26:18 50:22
59:2
testing 35:6
tethered 48:22
48:25
thank 27:5,11
31:12 57:3
61:24
theory 9:21,25
18:21,21,25
29:20 30:17,23
39:11,14,15
50:14,15,23
thereof 53:3
they'd 34:19
51:8
thing 6:24 8:6,7
12:12 15:10
37:14 46:4
things 9:14 11:3
16:15 17:8
19:8 25:8
33:10 34:10
38:18
think 6:20,21
8:16,21 9:18
9:21 11:8,18
11:24 12:9,24
14:22 17:14
19:5,11 21:12
24:22 25:4,8
25:23 26:1,7
28:6 33:1,5
35:15 39:25

17:4,7,8 18:5
19:15 20:7,10
20:12,21,25
27:17 34:12
40:7 42:4 49:7
49:12,13,18,19
50:12 54:20,21
54:23 55:6,19
55:21,22,24
56:3,3,17,17
56:23,24,25
warrantless
55:4,19,20
56:25 57:2
warrants 17:5
20:16 53:5
Washington 1:8
1:16,18 47:13
wasn't 5:25
17:10
wasting 45:13
watch 5:3 34:11
watched 37:9
Watts 54:4
way 6:1 15:21
16:1 22:22
27:20 38:20
44:22 45:8
46:10 47:1,11
51:9 52:25
53:8,8,10
ways 44:17,22
52:23 57:15
week 28:3
weighs 28:5
well-established
51:15
went 10:11
11:20 24:14
47:9
weren't 16:19
we'll 3:3 14:25
15:1 27:7
we're 6:23 12:16
12:17 20:8
34:24 35:6,16
35:18 36:15,18

49:6 55:4
we've 8:14 33:6
34:9
whatsoever
46:24
Whren 22:25
23:14
wide 48:4
wife 58:18
willing 33:12
58:21
win 13:1,10
wiretapping 6:8
6:13
Wisconsin 4:11
witness 50:5
women 54:6
wonder 45:8
word 24:16
words 21:11
45:5
work 4:19 15:1
17:21 33:15
workable 14:10
49:3 52:19,20
52:21
working 38:11
world 3:17 39:7
worry 33:8,8
worse 22:24
worthwhile
37:13
wouldn't 25:2
25:20 36:3
37:1 46:1
wrong 6:20 15:6
36:21 56:20

X

x 1:2,7 23:7

Y

year 44:14
years 4:3 22:4
44:9,10
York 39:23

Z

zero 41:19,20

1

1 14:16 41:20
42:21
10 16:19,20
33:23 44:9,10
50:5 56:5,18
10-day 55:12
56:13,24
10-1259 1:5 3:4
10:07 1:13 3:2
11 16:20
11:10 62:2
12 35:23 42:21
43:15,16,24
44:1
1920 56:21
1983 13:20
1984 13:11
25:11 27:1
33:14 35:12
1984-type 57:17

2

2 14:3 28:5 41:5
41:16
2011 1:9
24 13:2,8 25:2
44:13 57:24
24-hour 15:11
41:16 60:4
24/7 18:14 22:12
27 2:7
28 23:9 25:3
33:23 39:25
40:2 50:5

3

3 2:4 41:6 42:21
50:16,17,24
30 4:3 14:16
22:4 34:10,18
34:19
365 44:13

4

4 16:7

5

5 47:18 51:11,22
51:23 57:5
50 51:23
500 44:12
535 52:14
57 2:10

8

8 1:9
880,000 28:7

9

90 44:10