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CASE SUMMARY

THE EXTENSION OF PRIVACY RIGHTS TO WORKPLACE TEXT MESSAGES UNDER *QUON V. ARCH WIRELESS*

INTRODUCTION

In *Quon v. Arch Wireless Operating Co.*, a panel of the United States Court of Appeals for the Ninth Circuit held that a public employer violated the Fourth Amendment by searching the contents of text messages sent and received on a public employee's work-issued pager.¹ In so holding, the Ninth Circuit found that the public employee had a reasonable expectation of privacy in the contents of the text messages, despite a formal Internet and computer policy stating otherwise.² Relying on the two-part *O'Connor* test for public-employer searches, the court found that the search was more intrusive than necessary to determine whether the messages were work-related or personal.³ The Ninth Circuit also held that a wireless text-messaging provider violated the Stored Communications Act ("SCA") when it released the contents of archived text messages without the consent of the addressee or recipient.⁴

¹ *Quon v. Arch Wireless Operating Co.*, 529 F.3d 892 (9th Cir. 2008).

² *Id.*

³ *Id.* at 908-09; see *O'Connor v. Ortega*, 480 U.S. 709 (1987). The *O'Connor* test asks whether a public employer's intrusion into a government employee's constitutionally protected privacy interest was reasonable at its inception and in its scope under all of the circumstances. *Id.* at 726.

⁴ *Quon*, 529 F.3d at 903.

I. FACTS AND PROCEDURAL HISTORY

In late 2002, the internal affairs department of the City of Ontario Police Department (“OPD”) investigated Sergeant Jeffrey Quon due to overages of his allotted characters on his city-provided text-messaging pager. Sergeant Quon, and others who sent and received messages from him, claimed that the review of their text messages violated the Fourth Amendment, the California Constitution, and the SCA.⁵ Sergeant Quon exchanged text messages with his wife, Jerilyn Quon, another OPD officer, Sergeant Trujillo, and one of the OPD’s dispatchers, April Florio.⁶

In 2001, the City of Ontario (“City”) contracted with Arch Wireless (“Arch”) for wireless text-messaging services.⁷ Sergeant Quon was one of the employees who received a pager from the OPD.⁸ Each employee was allotted 25,000 characters for text messaging per month.⁹ Sergeant Quon exceeded this monthly allotment three or four times prior to August 2002.¹⁰ In each month that he went over the allotted characters, he paid for the overages at the request of Lieutenant Duke, the officer in charge of the purchasing contract with Arch.¹¹

The OPD’s general “Computer Usage, Internet and E-mail Policy” stated that computer use for personal benefit is a significant violation of the policy and that users have no expectation of privacy or confidentiality when using work computers, the Internet, or e-mailing at work.¹² Lieutenant Duke testified that he had a meeting with Sergeant Quon after the first month of overages and confirmed that Sergeant Quon knew the computer, e-mail, and Internet policy applied to the pagers.¹³ Sergeant Quon testified that he did not remember having that conversation with Lieutenant Duke.¹⁴ However, the parties did not dispute that Sergeant Quon attended a meeting in April 2002, during which Lieutenant Duke told everyone present that the pager messages were considered e-mail and that the policy applied to those messages.¹⁵

⁵ *Id.* at 895.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* at 897.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* at 896, 906.

¹³ *Id.* at 896.

¹⁴ *Id.*

¹⁵ *Id.*

In August 2002, Sergeant Quon again exceeded the monthly text-messaging character allowance.¹⁶ After Lieutenant Duke expressed annoyance with being a “bill collector” for the overages, Chief Lloyd Scharf asked him to determine whether the overages were work-related, so that the OPD could increase the monthly allowance if needed.¹⁷ Lieutenant Duke requested transcripts of text messages to and from Sergeant Quon and several other employees.¹⁸ Arch confirmed the pager numbers and delivered copies of the text-message transcripts to Lieutenant Duke, who reported his initial findings to Chief Scharf.¹⁹ Chief Scharf also reviewed the transcripts with Sergeant Quon’s supervisor.²⁰

After reviewing the transcripts, Chief Scharf asked internal affairs to investigate whether Sergeant Quon was wasting City time by failing to do required work.²¹ The internal affairs investigators concluded that Sergeant Quon had a monthly overage of 15,158 characters, and that many of the messages were not work-related and “often sexually explicit.”²²

The plaintiffs sued the City, the OPD, Chief Scharf, and Debbie Glenn of the OPD’s Internal Affairs. The plaintiffs based their claims on the Stored Communications Act; article I, section 1, of the California Constitution; and the Fourth Amendment to the United States Constitution.²³ The plaintiffs moved for summary judgment on each of these claims, and the district court denied the plaintiffs’ motion in full.²⁴ The defendants also moved for summary judgment, which the district court granted in part and denied in part.²⁵

First, the district court found as a matter of law that Arch did not violate the SCA when it released the text-message transcripts to the City.²⁶ Second, the district court found as a matter of law that the plaintiffs had a reasonable expectation of privacy as to the contents of the text messages, but that there was a triable issue of material fact regarding

¹⁶ *Id.* at 897.

¹⁷ *Id.* at 897-98.

¹⁸ *Id.* at 898.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* Internal Affairs investigated the text messaging of the employees who had the most overages. *Quon v. Arch Wireless Operating Co.*, 554 F.3d 769, 771 (9th Cir. 2009) (Wardlaw, J., concurring in denial of reh’g en banc).

²² *Quon v. Arch Wireless Operating Co.*, 529 F.3d 892, 898 (9th Cir. 2008).

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

whether the government's search was reasonable under the circumstances.²⁷ The jury found that Chief Scharf's intent was to determine the reason for the overages. Based on this finding of fact, the trial court determined the search was reasonable.²⁸ Lastly, the district court held as a matter of law that Chief Scharf was not entitled to qualified immunity against the claims of Fourth Amendment violations, and that the City and the OPD were not entitled to statutory immunity against the claims of violations of the California Constitution.²⁹

The Ninth Circuit reversed the district court's findings regarding Arch's violation of the SCA and the reasonableness of the OPD's search.³⁰ However, the Ninth Circuit affirmed the trial court's findings regarding the City's and OPD's statutory immunity.³¹ The defendants' petition for rehearing en banc was denied.³²

II. NINTH CIRCUIT ANALYSIS

A. FOURTH AMENDMENT VIOLATIONS

The plaintiffs claimed that their privacy rights were violated when the City, the OPD, Chief Scharf, and Sergeant Glenn of internal affairs requested and received copies of the text-message transcripts.³³ Both the district court and the Ninth Circuit noted that the privacy interest protected by the California Constitution is no broader than the privacy interest protected by the Fourth Amendment.³⁴ Thus the Ninth Circuit's analysis of the privacy claims proceeded under the Fourth Amendment.³⁵

The Ninth Circuit agreed with the district court that all of the plaintiffs had a reasonable expectation of privacy in the content of the text messages.³⁶ It reiterated the principle that if a public employee has a reasonable expectation in the area searched, the governmental intrusion into that area must be reasonable at its inception and in its scope.³⁷

²⁷ *Id.* at 899.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.* at 909-10.

³¹ *Id.*

³² *Quon v. Arch Wireless Operating Co.*, 554 F.3d 769 (9th Cir. 2009).

³³ *Id.* at 903.

³⁴ *Quon v. Arch Wireless Operating Co.*, 529 F.3d 892, 903 (9th Cir. 2008) (citing *Hill v. Nat'l Collegiate Athletic Ass'n*, 7 Cal. 4th 1, 30 n.9, 865 P.2d 633 (Cal. 1994)).

³⁵ *Id.*

³⁶ *Id.* at 906.

³⁷ *Id.* at 904 (citing *O'Connor v. Ortega*, 480 U.S. 709, 726 (1987)).

However, the Ninth Circuit disagreed with the district court's finding that the search was reasonable.³⁸

1. Reasonable Expectation of Privacy in the Content of the Text Messages

The court found that plaintiffs Jerilyn Quon, Florio, and Trujillo had a reasonable expectation that no third party would intercept and read the text messages.³⁹ The court analogized the text messages to public phone conversations,⁴⁰ written letters,⁴¹ and e-mails,⁴² for all of which courts have found that individuals had reasonable expectations of privacy in the contents. Moreover, the court found that Arch's ability to access the information on the devices did not destroy Jerilyn's, Florio's, and Trujillo's expectation of privacy.⁴³ Privacy existed because they did not expect Arch to monitor their messages, and they certainly did not expect Arch to turn over the transcripts of the messages to other people.⁴⁴

The court also found that Sergeant Quon had a reasonable expectation of privacy regarding the content of the text messages, although his expectation of privacy turned on the OPD's privacy policies.⁴⁵ Despite the existence of the OPD's formal Internet and e-mail policy, the "operational reality" of the OPD was not in line with the policy.⁴⁶ Lieutenant Duke made it clear that he would not audit the

³⁸ *Id.* at 908.

³⁹ *Id.* at 906.

⁴⁰ *Katz v. United States*, 389 U.S. 347, 352 (1967) (holding that a person using a public phone has a reasonable expectation that the conversation will not be broadcast to the world); *Smith v. Maryland*, 442 U.S. 735, 742 (1979) (holding that people "realize that they must 'convey' phone numbers to the telephone company" and therefore do not have a reasonable expectation of privacy in the numbers they dial).

⁴¹ *United States v. Choate*, 576 F.2d 165, 174 (9th Cir. 1987) (holding that the Fourth Amendment protects a person's privacy in sealed letters and packages addressed to him); *United States v. Hernandez*, 313 F.3d 1206, 1209-10 (9th Cir. 2002) (holding that there is no reasonable expectation of privacy in the information on the outside of an envelope).

⁴² *United States v. Forrester*, 512 F.3d 500, 510 (9th Cir. 2008) (holding that e-mail users have no expectation of privacy in the to/from addresses of their messages).

⁴³ *Quon*, 529 F.3d at 905.

⁴⁴ *Id.*, see also *U. S. v. Heckenkamp*, 482 F.3d 1142, 1146-47 (9th Cir. 2007) (holding that a student did not lose his reasonable expectation of privacy in his computer merely because his university had a policy that it could access his computer in limited circumstances while he was connected to the university's network); *United States v. Ziegler*, 474 F.3d 1184, 1189-90 (9th Cir. 2007) (holding that an employee had a reasonable expectation in a private computer locked in his office despite a policy that the employer would monitor computer use).

⁴⁵ *Quon*, 529 F.3d at 906.

⁴⁶ *Id.* at 907 (quoting a phrase from *O'Connor v. Ortega*, 480 U.S. 709, 717 (1987)).

paggers as long as the employees agreed to pay for overages.⁴⁷ Lieutenant Duke's statements were found to carry weight in the employees' formation of reasonable expectations of privacy because it was Duke's job to administer the paggers, and because there were no audits prior to the audit of Sergeant Quon's pager.⁴⁸ Further, Sergeant Quon had exceeded his character limit three or four times previously without having his text messages reviewed.⁴⁹ Thus, the court determined that Sergeant Quon relied on the OPD's informal policy rather than its official policy in forming his reasonable expectation of privacy.⁵⁰

2. *Unreasonable Search of the Text-Message Transcripts*

The Ninth Circuit reversed the district court's finding that the search of Sergeant Quon's text messages was reasonable.⁵¹ Instead, the Ninth Circuit held that although the search was reasonable at its inception, it became unreasonable because it exceeded the scope of its legitimate purpose.⁵²

The Ninth Circuit held that a search is reasonable in scope when the method of the search is reasonably related to its purpose.⁵³ The court applied the "least intrusive means" test because the search was conducted by a public employer: a public employer's search of a governmental employee's work place is unreasonable if there are alternate means that are less intrusive.⁵⁴ According to the court, the OPD could have determined the appropriateness of the character limits in several ways other than reviewing the text-message transcripts.⁵⁵

The court suggested that the OPD could have 1) warned Sergeant Quon that he was not allowed to use his pager for personal messages for the month of September; 2) asked Sergeant Quon to count the characters himself; or 3) asked Sergeant Quon's permission to review the transcripts

⁴⁷ *Id.* at 907.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.* at 907-08. The defendants argued that Lieutenant Duke's statements could not be relied upon because he was not an official policy maker. The defendants also argued that under the California Public Records Act, public records are open to inspection at all times. Both the district court and the Ninth Circuit rejected these arguments. *Id.*

⁵¹ *Id.*

⁵² *Id.* The jury found that Chief Scharf's intent was to determine the reason for the overages, which is a legitimate, work-related purpose for the search. *Id.*

⁵³ *Id.* at 908 (citing *O'Connor v. Ortega*, 480 U.S. 709, 726 (1987)).

⁵⁴ *Id.* (citing *Schowengerdt v. Gen. Dynamics Corp.*, 823 F.2d 1328, 1336 (9th Cir. 1987)).

⁵⁵ *Id.*

after Sergeant Quon had redacted personal messages.⁵⁶ In light of these less intrusive means of searching, the court determined that the search was excessively intrusive for a non-investigatory search.⁵⁷ Therefore, the court concluded, the search was unreasonable under the Fourth Amendment.⁵⁸

B. VIOLATION OF THE STORED COMMUNICATIONS ACT

The Ninth Circuit reversed the district court's finding that Arch Wireless was a "remote computing service" (RCS) under the SCA.⁵⁹ Instead, the Ninth Circuit held that Arch Wireless was an "electronic communication service" (ECS).⁶⁰ The court also held that because Arch was an ECS, it violated the SCA by knowingly releasing the text-message transcripts to the City.⁶¹

An RCS provides the public with "computer storage or processing services by means of an electronic communications system."⁶² An ECS is "any service which provides to users thereof the ability to send or receive wire or electronic communications."⁶³ Arch argued that it should be classified as an RCS because it permanently stored the text-message communications on its system and thus provided storage services.⁶⁴ However, under the SCA, an ECS may store data as well. An ECS may temporarily store data incidental to the communication or provide storage for backup protection.⁶⁵

The Ninth Circuit rejected Arch's argument because there was no evidence that Arch stored the communication permanently for the City's use; instead, it simply "archived" the messages on its own server.⁶⁶ The court found that the definition of an ECS more adequately describes the services Arch provided to the City, because it did not provide "computer storage" or "processing services," but text-messaging pager services.⁶⁷ It acted as a conduit of electronic communications, and it stored those

⁵⁶ *Id.*

⁵⁷ *Id.* at 909.

⁵⁸ *Id.* at 903.

⁵⁹ *Id.* at 901.

⁶⁰ *Id.* at 900.

⁶¹ *Id.* at 903.

⁶² 18 U.S.C.A. § 2711(2) (Westlaw 2009).

⁶³ 18 U.S.C.A. § 2510(15) (Westlaw 2009).

⁶⁴ *Quon*, 529 F.3d at 902.

⁶⁵ *Quon*, 529 F.3d at 901; *see* 18 U.S.C.A. § 2510(17) (Westlaw 2009).

⁶⁶ *Quon*, 529 F.3d at 902-903.

⁶⁷ *Id.* at 901.

communications as backup for the user.⁶⁸

The court further supported its finding that Arch was an ECS by looking to the SCA's legislative history.⁶⁹ The Senate Report identified two types of electronic services: 1) data communication, and 2) data storage and processing.⁷⁰ Businesses offering either type of service create copies of private messages for later reference.⁷¹ However, an RCS processes or stores data as an off-site third party,⁷² while an ECS facilitates communications between two other parties.⁷³ Although an RCS uses electronic communications, those communications most often involve transmitting data between the RCS and its customers, not between two users as would be the case with an ECS.⁷⁴

Lastly, the Ninth Circuit relied on its findings in *Theofel v. Farey-Jones*, a case that dealt with stored e-mail communications.⁷⁵ In *Theofel*, the Ninth Circuit concluded the defendant, NetGear, stored e-mail on its server after the messages were delivered to the intended recipient.⁷⁶ These communications were stored for backup protection.⁷⁷ Like NetGear, Arch served as a conduit of electronic communications from one user to another, and Arch stored the text messages for backup protection.⁷⁸

The distinction between an RCS and an ECS is important because it determines whether a service may release private information.⁷⁹ An RCS may release a private communication to a third party with the lawful consent of a subscriber, originator, addressee or intended recipient.⁸⁰ An ECS may only release a private communication to a third party with the lawful consent of the originator, addressee or intended recipient.⁸¹ Arch, if classified as an RCS, could have released the text-message transcripts to the City with the plaintiffs' permission, or with the City's own

⁶⁸ *Id.* at 902.

⁶⁹ *Id.* at 901.

⁷⁰ *Id.* (citing S. REP. NO. 99-541, at 2-3 (1986)).

⁷¹ *Id.* (citing S. REP. NO. 99-541, at 3).

⁷² *Id.*

⁷³ *See id.* ("Arch Wireless provided a 'service' that enabled Quon and the other Appellants to 'send or receive . . . electronic communications,' i.e., text messages.")

⁷⁴ *Id.* at 902 (citing S. REP. NO. 99-541, at 10-11) (explaining that hospitals and banks often use an off-site data repository provided by an RCS to store medical or financial files and may submit the data via electronic communications).

⁷⁵ *Theofel v. Farey-Jones*, 359 F.3d 1066 (9th Cir. 2004).

⁷⁶ *Quon*, 529 F.3d at 902 (citing *Theofel*, 359 F.3d at 1075).

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *See id.* at 900.

⁸⁰ 18 U.S.C.A. § 2702(b)(3) (Westlaw 2009).

⁸¹ *Id.*

permission.⁸² But as an ECS, Arch could release the private communications only with the permission of the sender or recipient of each communication.⁸³ Thus, Arch violated the SCA when it released the transcripts to the City without the permission of any of the plaintiffs.

C. IMMUNITY

The district court held that Chief Scharf was not entitled to qualified immunity as a matter of law.⁸⁴ The Ninth Circuit disagreed, holding that Chief Scharf was entitled to qualified immunity from liability for violations of federal and state constitutional privacy rights because no privacy right had been clearly established that would notify Chief Scharf that his conduct was unlawful.⁸⁵ At the time Chief Scharf performed the search, the law was clear that a public employee is free from unreasonable searches in the workplace.⁸⁶ However, there was no clear law establishing whether users have a reasonable expectation of privacy in archived text messages.⁸⁷

The Ninth Circuit affirmed the district court's ruling that the City and OPD were not protected by statutory immunity against the California constitutional claim.⁸⁸ A public employee is not liable for injury caused by "instituting or prosecuting any judicial or administrative proceeding within the scope of his employment."⁸⁹ The policy behind the statute is to encourage fearless investigation and prosecution of matters within the scope of the public employee's purview.⁹⁰

The Ninth Circuit held that such a purpose is not served in a case like the search of Sergeant Quon's text messages, because this investigation could not have led to a judicial or administrative proceeding.⁹¹ Misconduct was a prerequisite for any formal proceeding against Sergeant Quon.⁹² However, the OPD's informal policy allowed employees to use the pagers for personal messages, and it allowed them

⁸² *Quon*, 529 F.3d at 900. There was no dispute that the City was a subscriber and not an addressee or intended recipient. *Id.*

⁸³ *Id.*

⁸⁴ *Id.* at 899.

⁸⁵ *Id.* at 909.

⁸⁶ *Id.* at 909-10.

⁸⁷ *Id.* at 910.

⁸⁸ *Id.*

⁸⁹ CAL. GOV. CODE § 821.6 (Westlaw 2009).

⁹⁰ *Quon*, 529 F.3d at 910.

⁹¹ *Id.*

⁹² *Id.*

to exceed the 25,000 character limit.⁹³ Under this informal policy, none of Sergeant Quon's actions could have been deemed misconduct. Therefore, the City's and OPD's search was not within the scope of the statutory immunity.⁹⁴

III. IMPLICATIONS OF THE DECISION

The unanimous Ninth Circuit panel decision in *Quon v. Arch Wireless* expands the realm of privacy rights into a new form of electronic communication: text messaging. However, the search in *Quon* was a workplace search. Privacy expectations are often lower in the workplace than in personal life, partly due to employers' computer and Internet privacy policies. This lower privacy expectation is especially true in public employment, due to transparency laws.⁹⁵ The Ninth Circuit's finding that a public employee has a reasonable privacy expectation in an employer-issued text-messaging device indicates that the Ninth Circuit is likely to find a privacy interest in the contents of personal text messages, whether sent and received on a work-related or personal device.

To help define the scope of privacy in the work place, employers should update their Internet and e-mail policies. The Ninth Circuit decision in *Quon* came as a surprise to some, spurring several articles advising employers to update their electronic communication privacy policies.⁹⁶ But the *Quon* outcome should not have come as that much of a surprise in light of decisions in other circuits, which apply the Fourth Amendment to electronic communications on other devices, such as cell

⁹³ *Id.* at 897.

⁹⁴ *Id.* at 910.

⁹⁵ The California Public Records Act is an example. See CAL.GOV. CODE § 6250 et seq. (Westlaw 2009).

⁹⁶ See, e.g., Brian Kane, *It's Not Your Blackberry: The Courts Remind Employers To Update Their Workplace Electronics Policies*, 51 ADVOCATE (IDAHO) 21 (Oct. 2008) ("This article underscores the need to dust off electronic usage policies for an overhaul, in light of the Ninth Circuit Court of Appeals' recent decision in *Quon*"); Mark E. Schreiber & Barbara A. Lee, *New Liabilities and Policies for Incidental Private Use of Company Electronic Systems and PDAs*, 52 BOSTON B. J. 11, 12 (Dec. 2008) (noting the common practice of employers allowing employees to use work-place internet and e-mail systems for personal use, but monitoring that use, as well as discussing how to use *Quon* to help adjust an employer's monitoring practices); Peter Brown, *Developing Corporate Policies for Information Security and Privacy: Some Key Issues*, 929 PLI/PAT 439, 450-51 (Mar. – Apr. 2008) (commenting on the legal uncertainties regarding employer and employee rights for e-mail monitoring in the workplace, while focusing on the potential liabilities to the employer for an employee's abuse of e-mail); William A. Herbert, *The Electronic Workplace: To Live Outside the Law You Must Be Honest* 12 EMP. RTS. & EMP. POL'Y J. 49, 77 (2008) (noting that the OPD in *Quon* did not promulgate a formal pager-use policy, but instead relied on an informal policy, which did not effectively limit the scope of privacy for the pagers).

phones.⁹⁷ Both private and public employers can learn from these cases in drafting and implementing their Internet and e-mail policies. As the OPD discovered in *Quon*, employers must not only ensure that employees understand what communications are covered under the e-mail policy, but they must also consistently enforce that policy as well.⁹⁸

As technology outstrips the current legislation (mainly the SCA and the Electronic Consumers Protection Act [ECPA]),⁹⁹ the need for Congress to readdress the issues presented in *Quon* and other technology-search cases becomes more obvious.¹⁰⁰ In *Quon*, the Ninth Circuit pointed out that the purpose of the SCA is to deal with a “host of potential privacy breaches that the Fourth Amendment does not address.”¹⁰¹ However, the ECPA was enacted in 1986, well before the existence of many technologies taken for granted in today’s workplace.¹⁰²

Consumer groups such as the ACLU and the Electronic Frontier Foundation have been advocating privacy in technology on two fronts. First, these groups are advocating more comprehensive protection statutes.¹⁰³ Second, they are litigating issues with particular technologies and their individual problems case-by-case. With the efforts of these consumer groups and with the heightened public attention to the federal warrantless wiretapping program, it is likely that Congress will soon reconsider privacy laws in an attempt to deal with new innovations in technology.

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⁹⁷ *Quon*, 529 F.3d at 905 (citing with approval *United States v. Finley*, 477 F.3d 250, 259 (5th Cir. 2007), in which the Fifth Circuit held that the content of a cell phone text message is protected by the Fourth Amendment).

⁹⁸ *Id.* at 906 (holding that the OPD’s informal policy regarding use of the pagers gave Sergeant Quon a reasonable expectation in the messages).

⁹⁹ Electronic Consumers Protection Act, Pub. L. No. 99-508, 100 Stat. 1848 (1986).

¹⁰⁰ James X. Dempsey, *Digital Search & Seizure: Updating Privacy Protections To Keep Pace with Technology*, 935 PLI/Pat 543, 547 (2008).

¹⁰¹ *Quon*, 529 F.3d at 900.

¹⁰² Dempsey, *supra* note 101, at 547.

¹⁰³ See Electronic Frontier Foundation, <http://www EFF.org/issues/privacy> (last visited Apr. 13, 2009); American Civil Liberties Union Homepage, <http://www ACLU.com/privacy/index.html> (last visited Apr. 13, 2009).

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