

[US Supreme Court Issues Opinion in Quon Sexting Case](#)

Posted to [Erickson's Social Networking Law Blog](#) by [Megan J. Erickson](#) on June 17, 2010.

The United States Supreme Court [ruled](#) today that a public employer's search of sexually explicit text messages on a police officer's employer-issued pager did not constitute an illegal invasion of privacy. The Court overturned the Ninth Circuit, which had determined the employee had a reasonable expectation of privacy in his text messages and that the city's search was not reasonable.

The city argued its employees had no reasonable expectation of privacy in communications made on employer-provided devices. The Court explained:

The record does establish that OPD, at the outset, made it clear that pager messages were not considered private. The City's Computer Policy stated that "[u]sers should have no expectation of privacy or confidentiality when using" City computers. . . . Chief Scharf's memo and Duke's statements made clear that this official policy extended to text messaging.

The disagreement over the expectation of privacy question arose as a result of later communications by the officer responsible for the city's contract with Arch Wireless, and whether these later representations overrode the city's official policy. The Court, however, avoided deciding that question -- resting its decision on narrower grounds. The Court advised, "Prudence counsels caution before the facts in the instant case are used to establish far-reaching premises that define the existence, and extent, of privacy expectations enjoyed by employees when using employer-provided communication devices."

The Court acknowledged that "[r]apid changes in the dynamics of communication and information transmission are evident not just in the technology itself but in what society accepts as proper behavior" and concluded that "[a]t present, it is uncertain how workplace norms, and the law's treatment of them, will evolve." The Court said a broad holding on the question of employee privacy expectations vis-à-vis employer-provided equipment may well have implications for future cases that can't be predicted. The Court essentially moved on to simply assume without deciding that even if Quon had a reasonable expectation of privacy in his text messages, the city did not violate the Fourth Amendment by obtaining and reviewing the transcripts in this case.

Stay tuned for further analysis and comment on this important case! More posts on this case will come after I've had more time to review the details more closely.