

## Supreme Court Rules on Text Message Privacy Case

The Supreme Court overturned a 9th Circuit Court of Appeals ruling concerning employer-provided communication devices and workers' privacy rights. The Supreme Court ruled in favor of the employer, the city of Ontario, ruling that the search of the employee's text messages was reasonable and not in violation of the employee's Fourth Amendment rights.

**Background of the case.** Police sergeant Jeff Quon received a pager from his employer, the city of Ontario, California. The city's contract with Arch Wireless Operating Co. contained a limit on the number of characters that could be texted on a monthly basis. If the city's employees exceeded that limit, the city would be charged extra fees.

Quon signed a "Computer Usage, Internet and E-Mail Policy", which states that the City "reserves the right to monitor and log all network activity...with or without notice". While the policy did not include text messages, the City announced to employees, and put in writing in a memorandum, that text messages would be treated the same way as e-mails, and that they could be audited.

However, the city had an "informal policy" that it wouldn't audit such messages so long as employees who went over their monthly text messaging limit reimbursed the city for overcharges.

Quon went over his limit 3 or 4 months, each time paying for the overage. His lieutenant complained to other officers that he was tired of being a "bill collector" for the paging services. There was also concern that officers might be wasting official time and resources in sending personal messages while on duty.

The lieutenant asked Arch Wireless to send a transcript of the messages of officers who had incurred overcharges. Arch complied, and the city audited Quon's archived messages from August and September. Many of the messages were both personal and sexually explicit, and sent during work hours.

Quon sued for invasion of privacy under the Fourth Amendment and the federal Stored Communications Act. During arguments, the city said the purpose of the audit was to determine if the character limit was too low and should be increased for employees' business needs. The 9th Circuit Court of Appeals ruled that the city and the police department were liable for violating his rights. *Quon v. Arch Wireless, U.S. Court of Appeals for the 9th Circuit, No. 07-55282 (6/18/08)*.

**Supreme Court ruling.** The Supreme Court overturned the 9th Circuit's ruling, holding that the search and audit of the transcripts was reasonable. The court found that the review was an efficient way to determine if overages were work-related or personal in nature. The Court also found that the audit was also not "excessively intrusive," and that Quon did not have a reasonable expectation of privacy.

The Supreme Court noted that electronic communications and information transmission, as well as what is considered proper use in the workplace, are rapidly changing, and that "employer policies concerning communications will of course shape the reasonable expectations of their employees, especially to the extent that such policies are clearly communicated." *City of Ontario v. Quon, U.S. Supreme Court No.08-1332 (6/17/10)*.