SCOTUSwiki Analysis of and Information About the Supreme Court's 2009-10 Term
Employment and Labor Related Cases:
PRIVACY

By

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City of Ontario v. Quon

From ScotusWiki


Docket: 08-1332

Issues: (1) Whether a SWAT team member has a reasonable expectation of privacy in text messages transmitted on his SWAT pager, where the police department has an official no-privacy policy but a non-policymaking lieutenant announced an informal policy of allowing some personal use of the pagers; (2) Whether individuals who send text messages to a SWAT team member’s SWAT pager have a reasonable expectation that their messages will be free from review by the recipient’s government employer.

Contents

1 Briefs and Documents
   1.1 Decision
   1.2 Oral Argument
   1.3 Merits Briefs
   1.4 Amicus Briefs
   1.5 Certiorari-Stage Documents
2 Argument Recap
3 Pre-Argument Articles
   3.1 Argument Preview
   3.2 Grant Write-Up
4 Links and Further Information
   4.1 Media Links
   4.2 From the Blogosphere
   4.3 Other Resources

Briefs and Documents

Decision

REVERSED AND REMANDED in a 9-0 decision with an opinion written by Justice Kennedy. Justice Scalia joined all but one part of the Court’s opinion, and additionally wrote a concurrence in part and in the judgment. Justice Stevens wrote a separate concurrence.

Oral Argument

Transcript (April 19, 2010)

Merits Briefs

- Brief for Petitioner City of Ontario, California, Ontario Police Department, and Lloyd Scharf
- Brief for Respondent Jeff Quon, Jerilyn Quon, April Florio, and Steve Trujillo
- Reply Brief for Petitioner City of Ontario, California, Ontario Police Department, and Lloyd Scharf
Amicus Briefs

- Brief for The National League of Cities, National Association of Counties, International City/County Management Association, the U.S. Conference of Mayors, and the International Municipal Lawyers Association in Support of Petitioner
- Brief for the League of California Cities and the California State Association of Counties in Support of Petitioners
- Brief for the National School Boards Association, the National Association of Secondary School Principals and the California School Boards Association in Support of Petitioners
- Brief for the Los Angeles Times Communications LLC, the Press-Enterprise Company, the Associated Press, E.W. Scripps Co., the California Newspapers Publishers Association, the Reporters Committee for Freedom of the Press, the First Amendment Coalition and Californians Aware in Support of Petitioners
- Brief for the American Federation of Labor and the Congress of Industrial Organizations in Support of Respondent
- Brief for the Electronic Frontier Foundation, Center for Democracy & Technology, American Civil Liberties Union, and Public Citizen in Support of Respondent
- Motion for Leave to File Amicus Curiae Brief and Brief for the Rutherford Institute in Support of Respondent
- Brief for the United States in Support of Reversal

Certiorari-Stage Documents

- Opinion below (9th Circuit)
- Petition for certiorari
- Brief in opposition
- Petitioner’s reply
- Amicus brief of the League of California Cities and the California State Association of Counties'

Argument Recap

Lyle Denniston originally wrote the following for SCOTUSblog:

Justice Ruth Bader Ginsburg may have spoken for the entire Supreme Court on Monday when she offered a simple scenario: if the government hands out personal messaging devices to its workers, calls a meeting to put limits on their use, and tells the workers that their e-mails are going to be monitored, why would the employees think their messages were private? The obvious answer would seem to be that it was not reasonable for them to think that. Since there seemed little dissent from that proposition, a major case on electronic privacy in the workplace could well end with a Digital Age victory for the government as employer.

Sgt. Jeff Quon of the Ontario, Calif., police department and his texting partners drew a little sympathy from the Justices during the oral argument in Ontario v. Quon (08-1332), but it was nowhere near enough to indicate that they will gain a constitutional right to privacy in the e-mails they exchanged on the sergeant’s SWAT team pager. While the Court did not seem tempted to rule that a government employee never has any right to expect privacy in any message on a government-provided pager, it might go far to limit that right, especially in police departments or other agencies where the workers are given the pagers mainly for emergency use.

What mainly seemed to overwhelm Sgt. Quon’s hopes for privacy were the facts in the case, at least as the Court’s members filtered through those facts and emphasized the ones that ran against his privacy claims. Chief Justice John G. Roberts, Jr., did suggest that, from Sgt. Quon’s point of view, he may well have gotten at least mixed signals from a superior that suggested to him that what he texted with wife, girlfriend and team colleague might be shielded from supervisors’ eyes. But, as the lawyer for the city of Ontario reminded the Chief Justice, whether that hope on his part had constitutional protection did not depend on what he believed, but rather on what society was prepared to endorse. And, from what most Justices said, it hardly seemed that society is willing to let a SWAT team member use a pager without monitoring.

Pre-Argument Articles

Argument Preview

The following was originally written by Lyle Denniston for SCOTUSblog.