

SUPREME COURT OF THE UNITED STATES

No. 08–133

CITY OF ONTARIO, CALIFORNIA, ET AL.,
PETITIONERS v. JEFF QUON ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE NINTH CIRCUIT

[June 17, 2010]

JUSTICE KENNEDY delivered the opinion of the Court.

This case involves the assertion by a government employer of the right, in circumstances to be described, to read text messages sent and received on a pager the employer owned and issued to an employee. The employee contends that the privacy of the messages is protected by the ban on “unreasonable searches and seizures” found in the Fourth Amendment to the United States Constitution, made applicable to the States by the Due Process Clause of the Fourteenth Amendment. *Mapp v. Ohio*, 367 U. S. 643 (1961). Though the case touches issues of far-reaching significance, the Court concludes it can be resolved by settled principles determining when a search is reasonable.

I

A

The City of Ontario (City) is a political subdivision of the State of California. The case arose out of incidents in 2001 and 2002 when respondent Jeff Quon was employed by the Ontario Police Department (OPD). He was a police sergeant and member of OPD’s Special Weapons and Tactics (SWAT) Team. The City, OPD, and OPD’s Chief, Lloyd Scharf, are petitioners here. As will be discussed, two respondents share the last name Quon. In this opinion “Quon” refers to Jeff Quon, for the relevant events mostly revolve around him.

In October 2001, the City acquired 20 alphanumeric pagers capable of sending and receiving text messages. Arch Wireless Operating Company provided wireless service for the pagers. Under the City’s service contract with Arch Wireless, each pager was allotted a limited number of characters sent or received each month. Usage in excess of that amount would result in an additional fee. The City issued pagers to Quon and other SWAT Team members in order to help the SWAT Team mobilize and respond to emergency situations.

Before acquiring the pagers, the City announced a “Computer Usage, Internet and E-Mail Policy” (Computer

Policy) that applied to all employees. Among other provisions, it specified that the City “reserves the right to monitor and log all network activity including e-mail and Internet use, with or without notice. Users should have no expectation of privacy or confidentiality when using these resources.” App. to Pet. for Cert. 152a. In March 2000, Quon signed a statement acknowledging that he had read and understood the Computer Policy.

The Computer Policy did not apply, on its face, to text messaging. Text messages share similarities with e-mails, but the two differ in an important way. In this case, for instance, an e-mail sent on a City computer was transmitted through the City’s own data servers, but a text message sent on one of the City’s pagers was transmitted using wireless radio frequencies from an individual pager to a receiving station owned by Arch Wireless. It was routed through Arch Wireless’ computer network, where it remained until the recipient’s pager or cellular telephone was ready to receive the message, at which point Arch Wireless transmitted the message from the transmitting station nearest to the recipient. After delivery, Arch Wireless retained a copy on its computer servers. The message did not pass through computers owned by the City.

Although the Computer Policy did not cover text messages by its explicit terms, the City made clear to employees, including Quon, that the City would treat text messages the same way as it treated e-mails. At an April 18, 2002, staff meeting at which Quon was present, Lieutenant Steven Duke, the OPD officer responsible for the City’s contract with Arch Wireless, told officers that messages sent on the pagers “are considered e-mail messages. This means that [text] messages would fall under the City’s policy as public information and [would be] eligible for auditing.” App. 30. Duke’s comments were put in writing in a memorandum sent on April 29, 2002, by Chief Scharf to Quon and other City personnel.

Within the first or second billing cycle after the pagers were distributed, Quon exceeded his monthly text message character allotment. Duke told Quon about the overage, and reminded him that messages sent on the pagers were “considered e-mail and could be audited.” *Id.*, at 40. Duke said, however, that “it was not his intent to audit [an] employee’s text messages to see if the overage [was] due to work related transmissions.” *Ibid.* Duke suggested that Quon could reimburse the City for the overage fee rather than have Duke audit the messages. Quon wrote a check to the City for the overage. Duke offered the same arrangement to other employees who incurred overage fees.

Over the next few months, Quon exceeded his character limit three or four times. Each time he reimbursed the City. Quon and another officer again incurred overage fees for their pager usage in August 2002. At a meeting in October, Duke told Scharf that he had become “tired of being a bill

collector.” Id., at 91. Scharf decided to determine whether the existing character limit was too low—that is, whether officers such as Quon were having to pay fees for sending work-related messages—or if the overages were for personal messages. Scharf told Duke to request transcripts of text messages sent in August and September by Quon and the other employee who had exceeded the character allowance.

At Duke’s request, an administrative assistant employed by OPD contacted Arch Wireless. After verifying that the City was the subscriber on the accounts, Arch Wireless provided the desired transcripts. Duke reviewed the transcripts and discovered that many of the messages sent and received on Quon’s pager were not work related, and some were sexually explicit. Duke reported his findings to Scharf, who, along with Quon’s immediate supervisor, reviewed the transcripts himself. After his review, Scharf referred the matter to OPD’s internal affairs division for an investigation into whether Quon was violating OPD rules by pursuing personal matters while on duty.

The officer in charge of the internal affairs review was Sergeant Patrick McMahon. Before conducting a review, McMahon used Quon’s work schedule to redact the transcripts in order to eliminate any messages Quon sent while off duty. He then reviewed the content of the messages Quon sent during work hours. McMahon’s report noted that Quon sent or received 456 messages during work hours in the month of August 2002, of which no more than 57 were work related; he sent as many as 80 messages during a single day at work; and on an average workday, Quon sent or received 28 messages, of which only 3 were related to police business. The report concluded that Quon had violated OPD rules. Quon was allegedly disciplined.

B

Raising claims under Rev. Stat. §1979, 42 U. S. C. §1983; 18 U. S. C. §2701 et seq., popularly known as the Stored Communications Act (SCA); and California law, Quon filed suit against petitioners in the United States District Court for the Central District of California. Arch Wireless and an individual not relevant here were also named as defendants. Quon was joined in his suit by another plaintiff who is not a party before this Court and by the other respondents, each of whom exchanged text messages with Quon during August and September 2002: Jerilyn Quon, Jeff Quon’s then-wife, from whom he was separated; April Florio, an OPD employee with whom Jeff Quon was romantically involved; and Steve Trujillo, another member of the OPD SWAT Team. Among the allegations in the complaint was that petitioners violated respondents’ Fourth Amendment rights and the SCA by obtaining and reviewing the transcript of Jeff Quon’s pager messages and that Arch Wireless had violated the SCA by turning over the transcript to the City.

[Long procedural history elided. In sum, District Court held Quon had a reasonable expectation of privacy for the content of his messages, but that the City’s audit of the content of messages was reasonable (in the 4th Amd sense) because the intent was examine the character limits. Then, US 9th Circuit held Quon had a REP but that the audit was unreasonable (violated the 4th) and further that Arch Wireless had violated the SCA by turning over the transcript to the City... then the SCOTUS granted cert.]

II

The Fourth Amendment “guarantees the privacy, dignity, and security of persons against certain arbitrary and invasive acts by officers of the Government,” without regard to whether the government actor is investigating crime or performing another function. *Skinner v. Railway Labor Executives’ Assn.*, 489 U. S. 602, 613–614 (1989). The Fourth Amendment applies as well when the Government acts in its capacity as an employer. *Treasury Employees v. Von Raab*, 489 U. S. 656, 665 (1989).

...

III

A

Before turning to the reasonableness of the search, it is instructive to note the parties’ disagreement over whether Quon had a reasonable expectation of privacy. 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. App. to Pet. for Cert. 152a. Chief Scharf’s memo and Duke’s statements made clear that this official policy extended to text messaging. The disagreement, at least as respondents see the case, is over whether Duke’s later statements overrode the official policy. Respondents contend that because Duke told Quon that an audit would be unnecessary if Quon paid for the overage, Quon reasonably could expect that the contents of his messages would remain private. At this point, were we to assume that inquiry into “operational realities” were called for, compare *O’Connor*, 480 U. S., at 717 (plurality opinion), with *id.*, at 730–731 (opinion of SCALIA, J.); see also *id.*, at 737–738 (Blackmun, J., dissenting), it would be necessary to ask whether Duke’s statements could be taken as announcing a change in OPD policy, and if so, whether he had, in fact or appearance, the authority to make such a change and to guarantee the privacy of text messaging. It would also be necessary to consider whether a review of messages sent on police pagers, particularly those sent while officers are on duty, might be justified for other reasons, including performance evaluations, litigation concerning the lawfulness of police actions, and perhaps compliance with

state open records laws. See Brief for Petitioners 35–40 (citing Cal. Public Records Act, Cal. Govt. Code Ann. §6250 et seq. (West 2008)). These matters would all bear on the legitimacy of an employee’s privacy expectation.

The Court must proceed with care when considering the whole concept of privacy expectations in communications made on electronic equipment owned by a government employer. The judiciary risks error by elaborating too fully on the Fourth Amendment implications of emerging technology before its role in society has become clear. See, e.g., *Olmstead v. United States*, 277 U. S. 438 (1928), overruled by *Katz v. United States*, 389 U. S. 347, 353 (1967). In *Katz*, the Court relied on its own knowledge and experience to conclude that there is a reasonable expectation of privacy in a telephone booth. See *id.*, at 360–361 (Harlan, J., concurring). It is not so clear that courts at present are on so sure a ground. 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.

[Therefore...] It is preferable to dispose of this case on narrower grounds. For present purposes we assume several propositions *arguendo*: First, Quon had a reasonable expectation of privacy in the text messages sent on the pager provided to him by the City; second, petitioners’ review of the transcript constituted a search within the meaning of the Fourth Amendment; and third, the principles applicable to a government employer’s search of an employee’s physical office apply with at least the same force when the employer intrudes on the employee’s privacy in the electronic sphere.

B

Even if Quon had a reasonable expectation of privacy in his text messages, petitioners did not necessarily violate the Fourth Amendment by obtaining and reviewing the transcripts. Although as a general matter, warrantless searches “are *per se* unreasonable under the Fourth Amendment,” there are “a few specifically established and well-delineated exceptions” to that general rule. *Katz*, *supra*, at 357. The Court has held that the “special needs” of the workplace justify one such exception. *O’Connor*, 480 U. S., at 725 (plurality opinion); *id.*, at 732 (SCALIA, J., concurring in judgment); *Von Raab*, 489 U. S., at 666–667.

...When conducted for a “noninvestigatory, work-related purpos[e]” or for the “investigatio[n] of work-related misconduct,” a government employer’s warrantless search is reasonable if it is “justified at its inception” and if “the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of” the circumstances giving rise to the search. 480 U. S., at 725–726. The search here ... was reasonable under that

approach. The search was justified at its inception because there were “reasonable grounds for suspecting that the search [was] necessary for a noninvestigatory work-related purpose.” *Id.*, at 726. As a jury found, Chief Scharf ordered the search in order to determine whether the character limit on the City’s contract with Arch Wireless was sufficient to meet the City’s needs. This was, as the Ninth Circuit noted, a “legitimate work-related rationale.” 529 F. 3d, at 908. The City and OPD had a legitimate interest in ensuring that employees were not being forced to pay out of their own pockets for work-related expenses, or on the other hand that the City was not paying for extensive personal communications.

As for the scope of the search, reviewing the transcripts was reasonable because it was an efficient and expedient way to determine whether Quon’s overages were the result of work-related messaging or personal use. The review was also not “excessively intrusive.” *O’Connor*, *supra*, at 726 (plurality opinion). Although Quon had gone over his monthly allotment a number of times, OPD requested transcripts for only the months of August and September 2002. While it may have been reasonable as well for OPD to review transcripts of all the months in which Quon exceeded his allowance, it was certainly reasonable for OPD to review messages for just two months in order to obtain a large enough sample to decide whether the character limits were efficacious. And it is worth noting that during his internal affairs investigation, McMahon redacted all messages Quon sent while off duty, a measure which reduced the intrusiveness of any further review of the transcripts.

Furthermore, and again on the assumption that Quon had a reasonable expectation of privacy in the contents of his messages, the extent of an expectation is relevant to assessing whether the search was too intrusive. See *Von Raab*, *supra*, at 671; cf. *Vernonia School Dist. 47J v. Acton*, 515 U. S. 646, 654–657 (1995). Even if he could assume some level of privacy would inhere in his messages, it would not have been reasonable for Quon to conclude that his messages were in all circumstances immune from scrutiny. Quon was told that his messages were subject to auditing. As a law enforcement officer, he would or should have known that his actions were likely to come under legal scrutiny, and that this might entail an analysis of his on-the-job communications. Under the circumstances, a reasonable employee would be aware that sound management principles might require the audit of messages to determine whether the pager was being appropriately used. Given that the City issued the pagers to Quon and other SWAT Team members in order to help them more quickly respond to crises—and given that Quon had received no assurances of privacy—Quon could have anticipated that it might be necessary for the City to audit pager messages to assess the SWAT Team’s performance in particular emergency situations.

From OPD's perspective, the fact that Quon likely had only a limited privacy expectation, with boundaries that we need not here explore, lessened the risk that the review would intrude on highly private details of Quon's life. OPD's audit of messages on Quon's employer-provided pager was not nearly as intrusive as a search of his personal e-mail account or pager, or a wiretap on his home phone line, would have been. That the search did reveal intimate details of Quon's life does not make it unreasonable, for under the circumstances a reasonable employer would not expect that such a review would intrude on such matters. The search was permissible in its scope.

...

Because the search was motivated by a legitimate work-related purpose, and because it was not excessive in scope, the search was reasonable...and the Court of Appeals erred by holding to the contrary. Petitioners did not violate Quon's Fourth Amendment rights.

Because the search was reasonable, petitioners did not violate respondents' Fourth Amendment rights, and the court below erred by concluding otherwise. The judgment of the Court of Appeals for the Ninth Circuit is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.