Textual Discrimination?

By Reg P. Wydeven
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Being "old school" can be a cool thing, but sometimes it just means living in the past. When it comes to technology, I'm definitely old school.

I discovered this when my friend, Pearl, told me about our impromptu Kimberly High School class of 1991 reunion last weekend. I didn't know anything about it, but he explained that it was all over Facebook. Not being on Facebook, MySpace or any other social networking site, I was out of the loop.

My nephew had to show me how to program my cell phone, and he also told me that it has a camera in it and I can use it for text messaging. So far, I've received one text from my buddy, Tree. Sometimes, however, being old school can keep you out of trouble.

The U.S. Supreme Court recently agreed to decide a case this Spring on whether government employees have a "reasonable expectation" of privacy on wireless devices issued by their employer. The case involves Ontario, California, Police Sgt. Jeff Quon, who sued the City after officials monitored hundreds of his personal text messages. Quon claimed that these messages were private communications, like letters sent through the U.S. Postal Service, and therefore were protected from "unreasonable search and seizure."

Quon, a SWAT team sergeant, asserts his messages are private even though his department has a "Computer Usage, Internet and E-mail Policy" that limits employees' usage for personal communications. Additionally, Quon signed a statement acknowledging that "use of these tools for personal benefit is a significant violation of City of Ontario Policy" and that "users should have no expectation of privacy or confidentiality when using these resources."

Quon claimed that he was unaware the city's overall policy applied to the department and said there was an "informal policy [that] allowed officers to maintain their privacy in their text messages as long as they paid the overage charges." The City gave its employees a 25,000-character limit per month, per device, before overage charges were assessed. Quon admits that he exceeded the limit several times and paid the extra charges out of his personal funds.

The chief of police ordered a review of the pager transcripts for the two officers with the highest overage, one of whom was Quon, "to determine whether the city's monthly character limit was insufficient to cover business-related messages." During this review, the department uncovered racy messages to Quon's wife, his girlfriend and a fellow officer. During one month, Quon sent and received 456 personal messages while on duty, an average of 28 per shift, and only three were deemed work-related.

The City appealed a federal appeals court's ruling in favor of Quon, even though it held his messages were, "to say the least, sexually explicit in nature." The court sided with Quon because the department reviewed his messages without his consent and that "the search was excessively intrusive in light of the non-investigatory object of the search."

The Court will also hear Quon's lawsuit for invasion of privacy against Arch Wireless, now known as USA Mobility, the wireless company that contracted with the city. The Court must decide whether service providers can be held liable for providing communications without the consent of the sender.

Many government employees will be monitoring this case closely to see if they can still send racy text messages or if they'll have to go old school and resort to passing notes.