

Do You Know If Your Audience is Technologically Savvy? By Amylyn Riedling

I hope that you all have been having a wonderful summer and are going to have a chance to enjoy the sun - when it arrives! I ran across some interesting articles and information, and wanted to pass it along.

Many of us know that if you use your work computer and your work email address that your company can review the content of those emails, since you are using their property to send the messages. Did you know that the Supreme Court just ruled that if you are using a company phone that your employer can also read your text messages? Did you know that this specific ruling by the Supreme Court could be interpreted by employers as possibly opening doors for them into your private life?

Most of you reading this are thinking “if the employer gave you the cell phone for work purposes only, it reasons that just like email, if you don’t want your employer to see the information/message, don’t use the employer’s property to send the information/message. And you would be correct. The case that was just decided by the Supreme Court does not clarify a few items, and the few items it does not clarify could be interpreted in many ways, and that is where the interpretation of your privacy at work could get interesting.

Since it could be interpreted as the Unauthorized Practice of Law, I don’t want to get into analyzing this case and giving my opinion on the matters, but if you are interested, the case is [City of Ontario, CA vs. Quon](#). There are a few articles on the internet as well about this case and the possible impact it may have on the employer’s right to see your information, as well as the employee’s right to some level of privacy, even when at work.

The most interesting issue that has come to light for me from this case, is that in preparing for and hearing arguments on this case, it became painfully aware that the highest justices in the land may not have a firm hold on the technology and the pace at which it is changing. Now we all know that Justices will ask questions and we have no idea why they are asking them, but the questions asked by the Justices in this case show that there may be concern regarding how to present a case to any judge or jury when it comes to technology.

LawyersUSA's DC Dicta blog offers up some examples:

- The first sign was about midway through the argument, when Chief Justice John G. Roberts, Jr. - who is known to write out his opinions in long hand with pen and paper instead of a computer - asked what the difference was “between email and a pager?”

- At one point, Justice Anthony Kennedy asked what would happen if a text message was sent to an officer at the same time he was sending one to someone else. “Does it say: ‘Your call is important to us, and we will get back to you?’” Kennedy asked.
- Justice Antonin Scalia wrangled a bit with the idea of a service provider. You mean (the text) doesn’t go right to me?” he asked. Then he asked whether they can be printed out in hard copy. “Could Quon print these spicy little conversations and send them to his buddies?” Scalia asked.

LawyersUSA's DC Dicta blog also adds that “even Quon's attorney had some ‘technical difficulties,’ stumbling to explain the intricacies of whether and how text messages could be deleted. In this case, it seems an intimate familiarity not only with constitutional law and legal precedents, but also with the ins-and-outs of WSPs and SMS, are crucial to the case.”

So why am I writing about this - for the simple reminder of the following things, (1) even the highest Justices in the land do not have a grasp on all technology, and in fact may be the last people to use and understand technology and (2) you and your attorney need to remember that you have to do a balancing act in presenting your case between presenting the facts so a first grader can understand them and assuming that because you understand the technology being used/discussed in your case, that your target audience, whether a judge or a jury, may have no familiarity with the technology.

I hope to see everyone at the NALS of Greater Seattle Meet and Greet in August! It will be at Stoel Rives LLP from 11:30am to 1:30pm on Thursday, August 19, 2010.