



Judicial Decision-Making and the Constitution

OVERVIEW: The goal of this activity is to understand how judges make decisions through the interpretation and application of law. In this lesson, students will apply the Constitution and case precedent to a real case scenario. The balancing of security/order with individual rights/liberty will be explored.

OBJECTIVES: Upon successful completion of this activity, students will be able to:

- Analyze the Fourth Amendment;
- Apply the Fourth Amendment and case precedent to specific case studies; and
- Weigh issues of privacy and individual rights from a constitutional framework.

MATERIALS NEEDED: Copy of Fourth Amendment Handout A
PowerPoint Presentation
Supreme Court Case Study Form/Handout B
City of Ontario, California v. Quon/Handout C
Constitutional Question/Handout D
Court Decisions (for facilitator only)
Supplemental cases (for facilitator only)

TIME REQUIRED: 90 minutes recommended. Can be shortened or lengthened. Can also be divided into two lessons.

SUNSHINE STATE STANDARDS:	Grades 6-8	Grades 9-12:
	SS.C.1.3(3)	SS.C.2.4(3)
	SS.C.1.3(5)	SS.C.2.4(5)

ACTIVITIES:

This handout will be used in conjunction with the PowerPoint presentation titled: “The Courts and the Constitution: City of Ontario, California v. Quon, 130 S.Ct. 2619 (2010)”

1. **Slide 1:** Introduce yourself and let the students know that they will be given an opportunity to act like real judges to decide an actual issue that was decided by the United States Supreme Court.
2. **Slides 2 – 7:** Begin the course by asking participants what knowledge, skills, and qualities they think judges should have. Discuss their answers. Continue the discussion by distinguishing judges from politicians.



3. **Slides 8:** Inform students that today they will be experiencing the judicial branch first hand. Today they will become judges.
4. **Slides 9-10:** Dissect the Fourth Amendment with the students. Using the PowerPoint, have a student read one section of the Fourth Amendment and then follow it up with a discussion.

Sample Discussion:

“The right of the people to be secure in their persons, houses, papers, and effects...”

STOP

Ask Students:

- Is an apartment covered?
- How about a hotel room?
- Do the police have the right to search your trash?
- How about your urine—is that covered? Can a school require a football player to submit to a urine test before playing on the high school football team?

Do the same for the remaining four sections (each labeled in a different color on the PowerPoint). Have a student read a section, then follow the reading with a brief discussion about what that particular section means.

5. **Slide 11:** Stress to students that the Fourth Amendment applies only to state or government employees, not private employees
6. **Slide 12:** Inform students that in our democracy, there are two judicial systems in operation: the state and the federal
7. **Slides 13-18:** Discuss overall structure of the Florida Court system. Explain the difference between trial and appellate courts. Work through the slides and describe each level of the appellate chain in Florida.
8. **Slide 19:** Using the case study form and case abstract, review the attached case with the full group. Have the group read silently and underline all relevant facts. Initiate a dialogue to review the facts.
9. **Slide 20:** Elicit from students the fact that this case was filed in **federal** court and that Quon, the person who was searched, was a **plaintiff** in a civil action, unlike criminal cases where the person alleging a Fourth Amendment violation would usually be the defendant. Also elicit that the defendant here is a state agency. **Note:** Tell students that



Florida has a special, explicit right to privacy that does not exist in the federal constitution, but because this case involves a federal cause of action in California, that right is not applicable here.

10. **Slide 21:** Introduce the legal issues relevant to the facts just reviewed by the students.
11. **Slide 22:** Explain to students that the judge(s) deciding the issues presented needs to review case law to reach a decision here.
12. **Slide 23:** Return to the Fourth Amendment discussion by asking whether judges always need a warrant.
13. **Slides 24-26:** Discuss United States v. Zavala, 541 F.3d 562 (5th Cir.2008).
14. **Slides 27-28:** Discuss United States v. Finley, 477 F.3d 250 (5th Cir. 2007).
15. **Slide 29:** In the slide providing the quotation from Katz v. United States, 389 U.S. 347 (1967), have a student read the quotation out loud and then discuss. Make sure to explain that the first two lines of text are describing a warrant and define what *per se* means.
16. **Slide 30-31:** Explain that there are exceptions to the Fourth Amendment, and one relevant here is the “workplace exception.”
17. **Slides 32-33:** Discuss National Treasury Employees Union v. Von Raab, 489 U.S. 656 (1989).
18. **Slides 34-35:** Discuss O’Connor v. Ortega, 480 U.S. 709 (1987).
19. **Slide 36:** Explain to students that simply having a violation of the Fourth Amendment is not enough for Quon to receive relief. He also has to meet the heightened requirements of a section 1983 claim
20. **Slides 37-40:** Discuss case law with regard to heightened standard for section 1983 claims
21. **Slide 41:** Explain that because this is a section 1983 cause of action we are now in federal court, and use this as a transition to discuss structure of the federal court system. Also, briefly touch on the concept of federalism.
22. **Slide 42:** Explain to students that this case was originally filed in federal district court (specifically the Central District of California), and frame the issue facing the trial court and jury. Explain to the class that a federal jury found that the purpose of the audit of Quon’s text messages was to determine the adequacy of the number of characters allocated to each swat team member, not to determine whether Quon was using the pager



- to play games or waste time, and found in favor of the City of Ontario. Explain that the trial court held that the former was a “reasonable” reason to search the texts.
23. **Slides 43-48:** Explain the federal appellate system, comparing and contrasting it to the Florida appellate system. Tell the students that the Ninth Circuit Court of Appeals reversed the trial court and found in favor of Quon, holding that the search was not reasonable in scope. After discussing slide 44, **DO NOT TELL THE STUDENTS HOW THE ACTUAL SUPREME COURT DECIDED.**
 24. **Slides 49-50:** Ask participants if the Fourth Amendment rights of Quon were violated. Ask the questions presented in the slides to help stimulate thought. Lead a discussion to elicit arguments for both sides.
 25. **Slides 51-56:** Divide participants into groups of five to simulate a Supreme Court conference. In this Supreme Court conference activity, each group should:
 - Select a Chief Justice in each group to maintain order and lead discussions. Remaining participants are associate justices.
 - Discuss in each group why the search was constitutional or unconstitutional based on participants’ knowledge of the Fourth Amendment.
 - The Chief Justice will poll the justices to determine the final decision of the Court. This will be discussed to try and reach a unanimous court decision. Give at least 10-15 minutes.
 26. Have each group’s Chief Justice come to the front and present the decision of their court. Tally responses.
 27. **Slides 57-58:** Debrief with the actual U.S. Supreme Court decision.



COURT DECISIONS: FOR THE FACILITATOR

The United States District Court for the Central District of California, a federal district court, determined that Quon had a reasonable expectation of privacy in the content of his text messages. The trial court concluded that if the purpose of the audit was to determine whether Quon was using the pager to play games or waste time, then it was not constitutionally reasonable. If, however, the purpose was to assess the adequacy of the number of characters allocated to each swat team member to determine if officers were paying for work-related costs, then it was constitutionally reasonable. A jury found that the purpose of the audit was to determine the adequacy of the character limit and therefore found in favor of the City of Ontario.

The United States Court of Appeals for the Ninth Circuit reversed in part, agreeing with the District Court that Quon had a reasonable expectation of privacy in his text messages, but concluded that the search was not reasonable in scope. The appellate court held that there were less-intrusive ways that the City could have determined the adequacy of the character limit. The Court of Appeals denied a petition for rehearing en banc.

The United States Supreme Court granted review of the Ninth Circuit's decision.

DO NOT ANNOUNCE UNTIL CONCLUSION OF THE ACTIVITY:

The U.S. Supreme Court concluded that, regardless of whether Quon had a reasonable expectation of privacy, the search of his text message transcripts did not violate the Fourth Amendment because it was reasonable in scope.



FOURTH AMENDMENT – UNITED STATES CONSTITUTION

Amendment IV.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the places to be searched, and the persons or things to be seized.



Case Study/Supreme Court Conference

I. What are the Facts? _____

II. State the Issue to be Decided: _____

III. Arguments For Petitioner/Appellant: _____

IV. Arguments For Respondent/Appellee: _____

V. What Would You Decide? _____

VI. Reasons/Evaluation: _____

VII. Mock Supreme Court Conference Decision: _____

VIII. Actual Decision of the Court: _____



City of Ontario, California v. Quon

In October of 2001, the City of Ontario, California purchased pagers capable of sending and receiving text messages to help SWAT Team members mobilize and respond to emergency situations. Each pager was allotted a limited number of characters (letters, numbers, or symbols) to be sent and received each month, and excess usage resulted in additional fees to the City. Quon was a member of the SWAT Team and received one of the pagers.

The City had a computer policy, which Quon had signed, providing that the City could monitor all email and internet usage and that users should have no expectation of privacy when using the City's network. The policy did not explicitly discuss text messages, but the City verbally stated to Quon and other employees that the City would treat text messages the same way it treated emails, and that text messages would be eligible for auditing.

Quon exceeded his monthly character allotment, and the officer in charge of the pagers suggested that Quon could reimburse the City for the overage fee to avoid having the content of the messages audited. Quon elected to pay for the overages and continued to do so for the next few months.

The police chief decided to determine whether the character limit was too low, which caused Quon to be personally responsible for some payments. The wireless company provided transcripts of Quon's messages to the City, and the officer in charge of the pagers reviewed them and discovered that some of the messages sent and received on Quon's pager were sexually explicit.

An internal affairs officer reviewed the transcripts and eliminated any messages that were sent while Quon was off duty. The officer determined that in one month, Quon sent or received 456 messages during working hours, and no more than 57 of them were work-related. The officer's report concluded that Quon had violated Police Department rules by pursuing personal matters while on duty, and Quon was disciplined. Quon filed a section 1983 action against the City of Ontario in a federal trial court claiming that he had a reasonable expectation of privacy in his text messages and that the search was not reasonable.

Handout C



Issues

- Was the search reasonable in scope?
- Did Quon have a reasonable expectation of privacy?
- Was the right in question so clear that a reasonable official would understand that what he is doing violates that right?