

# The plaintiffs john bohach and jon catalano



**ASSIGN  
BUSTER**

The Plaintiffs John Bohach and Jon Catalano, were working as police officers in Reno Police Department. Sometime in 1996, they were accused of sending unacceptable messages to each other and to one other member of the Police department. This was done through the Department's " Alphapage" communication system. The program had been installed in 1994 with the sole purpose of allowing broadcast of " mini news releases" and " timely information" to members of the press. Information would be relayed through pagers distributed to journalists, who held between 40-70 gadgets. This would then decongest the Department's telephone lines for emergencies and other important police work.

Richard Kirkland, the then Chief of Reno Police Department, issued an order cautioning users that " every Alphapage message is logged on the network." The order prohibited some types of messages being relayed through the system. Such messages included those commenting on the Department's policy and any that violated the policy on non discrimination. The Internal Affairs section of Reno Police Department initiated investigations against the officers. Anticipating to be interrogated on the content of the message and the subsequent retrieval of the same, the officers filed a lawsuit. In the suit they sought to stop retrieval of the messages claiming that it would be a violation of their constitutional right to privacy.

It was held that Bohach, Catalano and another had no grounds to claim privacy since a warning had been issued that all messages would be logged. In addition, the court stated that Reno City was the owner of the communication system. As such they had a right to " do as they wish when it comes to accessing communications in electronic storage." Neither the

employees nor the City were liable under the provisions of Electronic Communications Privacy Act (ECPA).

### My Opinion on the Case

ECPA prohibits “(1) unauthorized and intentional " interception" of wire, oral, and electronic communications during the transmission phase, and (2) unauthorized " accessing" of electronically stored wire or electronic communications.” In its interpretation the Act defines an email as “ electronic communication.”

In lieu of this, I feel that the City of Reno Police Department had the right to retrieve the message. The action was authorized and could not have been a violation of ECPA since the equipment (including the computers, pagers, telephones and software) was their property. In any case, they had cautioned all members of staff that all messages would be recorded in the system. Before the officers sent private messages, they ought to have borne this in mind and taken extra precautions.

### Conclusion

Any employee using an employer’s electronic communication system, for private purposes not related to the work he/she is employed to do, does so at own risk. The employer has spent money and other resources to have the system in place. Such an email system is meant to promote the work of the employer. Employees wishing to communicate privately should use their own private email accounts. An employer has the right to do a random check on any existing communication systems to check for abuse and misuse of the

same. The employer does not necessarily have to issue an ultimatum or a word of caution.