SUPREME COURT OF THE UNITED STATES

Nos. 99–1687 and 99–1728

GLORIA BARTNICKI AND ANTHONY F. KANE, JR., PETITIONERS

99–1687 *v.*

FREDERICK W. VOPPER, AKA FRED WILLIAMS, ET AL.

UNITED STATES, PETITIONER

99–1728 *v.*

FREDERICK W. VOPPER, AKA FRED WILLIAMS, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

[May 21, 2001]

JUSTICE STEVENS delivered the opinion of the Court.

These cases raise an important question concerning what degree of protection, if any, the First Amendment provides to speech that discloses the contents of an illegally intercepted communication. That question is both novel and narrow. Despite the fact that federal law has prohibited such disclosures since 1934,[1] this is the first time that we have confronted such an issue.

The suit at hand involves the repeated intentional disclosure of an illegally intercepted cellular telephone conversation about a public issue. The persons who made

[1] See 48 Stat. 1069, 1103.

the disclosures did not participate in the interception, but they did know— or at least had reason to know— that the interception was unlawful. Accordingly, these cases present a conflict between interests of the highest order— on the one hand, the interest in the full and free dissemination of information concerning public issues, and, on the other hand, the interest in individual privacy and, more specifically, in fostering private speech. The Framers of the First Amendment surely did not foresee the advances in science that produced the conversation, the interception, or the conflict that gave rise to this action. It is therefore not surprising that Circuit judges, as well as the Members of this Court, have come to differing conclusions about the First Amendment's application to this issue. Nevertheless, having considered the interests at stake, we are firmly convinced that the disclosures made by respondents in this suit are protected by the First Amendment.

I

During 1992 and most of 1993, the Pennsylvania State Education Association, a union representing the teachers at the Wyoming Valley West High School, engaged in collective-bargaining negotiations with the school board. Petitioner Kane, then the president of the local union, testified that the negotiations were "'contentious'" and received "a lot of media attention." App. 97, 92. In May 1993, petitioner Bartnicki, who was acting as the union's "chief negotiator," used the cellular phone in her car to call Kane and engage in a lengthy conversation about the status of the negotiations. An unidentified person intercepted and recorded that call.

In their conversation, Kane and Bartnicki discussed the timing of a proposed strike, *id.,* at 41–45, difficulties created by public comment on the negotiations, *id.,* at 46, and the need for a dramatic response to the board's intransigence. At one point, Kane said: "'If they're not gonna

move for three percent, we're gonna have to go to their, their homes . . . To blow off their front porches, we'll have to do some work on some of those guys. (PAUSES). Really, uh, really and truthfully because this is, you know, this is bad news. (UNDECIPHERABLE).'" *Ibid.*

In the early fall of 1993, the parties accepted a non-binding arbitration proposal that was generally favorable to the teachers. In connection with news reports about the settlement, respondent Vopper, a radio commentator who had been critical of the union in the past, played a tape of the intercepted conversation on his public affairs talk show. Another station also broadcast the tape, and local newspapers published its contents. After filing suit against Vopper and other representatives of the media, Bartnicki and Kane (hereinafter petitioners) learned through discovery that Vopper had obtained the tape from Jack Yocum, the head of a local taxpayers' organization that had opposed the union's demands throughout the negotiations. Yocum, who was added as a defendant, testified that he had found the tape in his mailbox shortly after the interception and recognized the voices of Bartnicki and Kane. Yocum played the tape for some members of the school board, and later delivered the tape itself to Vopper.

II

In their amended complaint, petitioners alleged that their telephone conversation had been surreptitiously intercepted by an unknown person using an electronic device, that Yocum had obtained a tape of that conversation, and that he intentionally disclosed it to Vopper, as well as other individuals and media representatives. Thereafter, Vopper and other members of the media repeatedly published the contents of that conversation. The amended complaint alleged that each of the defendants "knew or had reason to know" that the recording of the

private telephone conversation had been obtained by means of an illegal interception. Relying on both federal and Pennsylvania statutory provisions, petitioners sought actual damages, statutory damages, punitive damages, and attorney's fees and costs.[2]

After the parties completed their discovery, they filed cross-motions for summary judgment. Respondents contended that they had not violated the statute because (a) they had nothing to do with the interception, and (b) in any event, their actions were not unlawful since the conversation might have been intercepted inadvertently. Moreover, even if they had violated the statute by disclosing the intercepted conversation, respondents argued, those disclosures were protected by the First Amendment. The District Court rejected the first statutory argument because, under the plain statutory language, an individual violates the federal Act by intentionally disclosing the contents of an electronic communication when he or she "know[s] or ha[s] reason to know that the information was obtained" through an illegal interception.[3] App. to Pet. for Cert. in No. 99–1687, pp. 53a–54a. Accordingly, actual involvement in the illegal interception is not necessary in order to establish a violation of that statute. With respect

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[2] Either actual damages, or "statutory damages of whichever is the greater of $100 a day for each day of violation or $10,000" may be recovered under 18 U. S. C. §2520(c)(2); under the Pennsylvania Act, the amount is the greater of $100 a day or $1,000, but the plaintiff may also recover punitive damages and reasonable attorney's fees. 18 Pa. Cons. Stat. §5725(a) (2000).

[3] Title 18 U. S. C. §2511(1)(c) provides that any person who "intentionally discloses, or endeavors to disclose, to any other person the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subsection; . . . shall be punished . . . ." The Pennsylvania Act contains a similar provision.

to the second statutory argument, the District Court agreed that petitioners had to prove that the interception in question was intentional,[4] but concluded that the text of the interception raised a genuine issue of material fact with respect to intent. That issue of fact was also the basis for the District Court's denial of petitioners' motion. Finally, the District Court rejected respondents' First Amendment defense because the statutes were content-neutral laws of general applicability that contained "no indicia of prior restraint or the chilling of free speech." *Id.,* at 55a–56a.

Thereafter, the District Court granted a motion for an interlocutory appeal, pursuant to 28 U. S. C. §1292(b). It certified as controlling questions of law: "(1) whether the imposition of liability on the media Defendants under the [wiretapping statutes] solely for broadcasting the newsworthy tape on the Defendant [Vopper's] radio/public affairs program, when the tape was illegally intercepted and recorded by unknown persons who were not agents of [the] Defendants, violates the First Amendment; and (2) whether imposition of liability under the aforesaid [wiretapping] statutes on Defendant Jack Yocum solely for providing the anonymously intercepted and recorded tape to the media Defendants violates the First Amendment." App. to Pet. for Cert. in No. 99–1728, p. 76a. The Court of Appeals accepted the appeal, and the United States, also a petitioner, intervened pursuant to 28 U. S. C. §2403 in order to defend the constitutionality of the federal statute.

All three members of the panel agreed with petitioners

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[4] Title 18 U. S. C. §2511(1)(a) provides: "(1) Except as otherwise specifically provided in this chapter [§§2510–2520 (1994 ed. and Supp. V)] any person who–

"(a) intentionally intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept, any wire, oral, or electronic communication; . . . shall be punished . . . ."

and the Government that the federal and Pennsylvania wiretapping statutes are "content neutral" and therefore subject to "intermediate scrutiny." 200 F. 3d 109, 121 (CA3 1999). Applying that standard, the majority concluded that the statutes were invalid because they deterred significantly more speech than necessary to protect the privacy interests at stake. The court remanded the case with instructions to enter summary judgment for respondents. In dissent, Senior Judge Pollak expressed the view that the prohibition against disclosures was necessary in order to remove the incentive for illegal interceptions and to preclude compounding the harm caused by such interceptions through wider dissemination. In so doing, he agreed with the majority opinion in a similar case decided by the Court of Appeals for the District of Columbia, *Boehner* v. *McDermott*, 191 F. 3d 463 (1999). See also *Peavy* v. *WFAA-TV, Inc.*, 221 F. 3d 158 (CA5 2000).[5] We granted certiorari to resolve the conflict. 530 U. S. 1260 (2000).

III

As we pointed out in *Berger* v. *New York*, 388 U. S. 41, 45–49 (1967), sophisticated (and not so sophisticated) methods of eavesdropping on oral conversations and inter-

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[5] In the *Boehner* case, as in this case, a conversation over a car cell phone was intercepted, but in that case the defendant knew both who was responsible for intercepting the conversation and how they had done it. 191 F. 3d, at 465. In the opinion of the majority, the defendant acted unlawfully in accepting the tape in order to provide it to the media. *Id.*, at 476. Apparently because the couple responsible for the interception did not eavesdrop "for purposes of direct or indirect commercial advantage or private financial gain," they were fined only $500. See Department of Justice Press Release, Apr. 23, 1997. In another similar case involving a claim for damages under §2511(1)(c), *Peavy* v. *WFAA-TV, Inc.*, 221 F. 3d 158 (CA5 2000), the media defendant in fact participated in the interceptions at issue.

cepting telephone calls have been practiced for decades, primarily by law enforcement authorities.[6] In *Berger*, we held that New York's broadly written statute authorizing the police to conduct wiretaps violated the Fourth Amendment. Largely in response to that decision, and to our holding in *Katz* v. *United States*, 389 U. S. 347 (1967), that the attachment of a listening and recording device to the outside of a telephone booth constituted a search, "Congress undertook to draft comprehensive legislation both authorizing the use of evidence obtained by electronic surveillance on specified conditions, and prohibiting its use otherwise. S. Rep. No. 1097, 90th Cong., 2d Sess., 66 (1968)." *Gelbard* v. *United States*, 408 U. S. 41, 78 (1972) (REHNQUIST, J., dissenting). The ultimate result of those efforts was Title III of the Omnibus Crime Control and Safe Streets Act of 1968, 82 Stat. 211, entitled Wiretapping and Electronic Surveillance.

One of the stated purposes of that title was "to protect effectively the privacy of wire and oral communications." *Ibid.* In addition to authorizing and regulating electronic

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[6] In particular, calls placed on cellular and cordless telephones can be intercepted more easily than those placed on traditional phones. See *Shubert* v. *Metrophone, Inc.*, 898 F. 2d 401, 404–405 (CA3 1990). Although calls placed on cell and cordless phones can be easily intercepted, it is not clear how often intentional interceptions take place. From 1992 through 1997, less than 100 cases were prosecuted charging violations of 18 U. S. C. §2511. See Statement of James K. Kallstrom, Assistant Director in Charge of the New York Division of the FBI on February 5, 1997 before the Subcommittee on Telecommunications, Trade, and Consumer Protection, Committee on Commerce, U. S. House of Representatives Regarding Cellular Privacy. However, information concerning techniques and devices for intercepting cell and cordless phone calls can be found in a number of publications, trade magazines, and sites on the Internet, see *id.,* at 6, and at one set of congressional hearings in 1997, a scanner, purchased off the shelf and minimally modified, was used to intercept phone calls of Members of Congress.

surveillance for law enforcement purposes, Title III also regulated private conduct. One part of those regulations, §2511(1), defined five offenses punishable by a fine of not more than $10,000, by imprisonment for not more than five years, or by both. Subsection (a) applied to any person who "willfully intercepts . . . any wire or oral communication." Subsection (b) applied to the intentional use of devices designed to intercept oral conversations; subsection (d) applied to the use of the contents of illegally intercepted wire or oral communications; and subsection (e) prohibited the unauthorized disclosure of the contents of interceptions that were authorized for law enforcement purposes. Subsection (c), the original version of the provision most directly at issue in this case, applied to any person who "willfully discloses, or endeavors to disclose, to any other person the contents of any wire or oral communication, knowing or having reason to know that the information was obtained through the interception of a wire or oral communication in violation of this subsection." The oral communications protected by the Act were only those "uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation." 18 U. S. C. §2510(2).

As enacted in 1968, Title III did not apply to the monitoring of radio transmissions. In the Electronic Communications Privacy Act of 1986, 100 Stat. 1848, however, Congress enlarged the coverage of Title III to prohibit the interception of "electronic" as well as oral and wire communications. By reason of that amendment, as well as a 1994 amendment which applied to cordless telephone communications, 108 Stat. 4279, Title III now applies to the interception of conversations over both cellular and

cordless phones.[7] Although a lesser criminal penalty may apply to the interception of such transmissions, the same civil remedies are available whether the communication was "oral," "wire," or "electronic," as defined by 18 U. S. C. §2510 (1994 ed. and Supp. V).

IV

The constitutional question before us concerns the validity of the statutes as applied to the specific facts of this case. Because of the procedural posture of the case, it is appropriate to make certain important assumptions about those facts. We accept petitioners' submission that the interception was intentional, and therefore unlawful, and that, at a minimum, respondents "had reason to know" that it was unlawful. Accordingly, the disclosure of the contents of the intercepted conversation by Yocum to school board members and to representatives of the media, as well as the subsequent disclosures by the media defendants to the public, violated the federal and state statutes. Under the provisions of the federal statute, as well as its Pennsylvania analog, petitioners are thus entitled to recover damages from each of the respondents. The only question is whether the application of these statutes in such circumstances violates the First Amendment.[8]

In answering that question, we accept respondents' submission on three factual matters that serve to distinguish most of the cases that have arisen under §2511. First, respondents played no part in the illegal interception. Rather, they found out about the interception only

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[7] See, *e.g.*, *Nix* v. *O'Malley*, 160 F. 3d 343, 346 (CA6 1998); *McKamey* v. *Roach*, 55 F. 3d 1236, 1240 (CA6 1995).

[8] In answering this question, we draw no distinction between the media respondents and Yocum. See, *e.g.*, *New York Times Co.* v. *Sullivan*, 376 U. S. 254, 265–266 (1964); *First Nat. Bank of Boston* v. *Bellotti*, 435 U. S. 765, 777 (1978).

after it occurred, and in fact never learned the identity of the person or persons who made the interception. Second, their access to the information on the tapes was obtained lawfully, even though the information itself was intercepted unlawfully by someone else. Cf. *Florida Star* v. *B. J. F.*, 491 U. S. 524, 536 (1989) ("Even assuming the Constitution permitted a State to proscribe *receipt* of information, Florida has not taken this step"). Third, the subject matter of the conversation was a matter of public concern. If the statements about the labor negotiations had been made in a public arena– during a bargaining session, for example– they would have been newsworthy. This would also be true if a third party had inadvertently overheard Bartnicki making the same statements to Kane when the two thought they were alone.

V

We agree with petitioners that §2511(1)(c), as well as its Pennsylvania analog, is in fact a content-neutral law of general applicability. "Deciding whether a particular regulation is content based or content neutral is not always a simple task. . . . As a general rule, laws that by their terms distinguish favored speech from disfavored speech on the basis of the ideas or views expressed are content based." *Turner Broadcasting System, Inc.* v. *FCC*, 512 U. S. 622, 642–643 (1994). In determining whether a regulation is content based or content neutral, we look to the purpose behind the regulation; typically, "[g]overnment regulation of expressive activity is content neutral so long as it is *justified* without reference to the content of the regulated speech.'" *Ward* v. *Rock Against Racism*, 491 U. S. 781, 791 (1989).[9]

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[9] "But while a content-based purpose may be sufficient in certain circumstances to show that a regulation is content based, it is not necessary to such a showing in all cases. . . . Nor will the mere asser-

In this case, the basic purpose of the statute at issue is to "protec[t] the privacy of wire[, electronic,] and oral communications." S. Rep. No. 1097, 90th Cong., 2d Sess., 66 (1968). The statute does not distinguish based on the content of the intercepted conversations, nor is it justified by reference to the content of those conversations. Rather, the communications at issue are singled out by virtue of the fact that they were illegally intercepted— by virtue of the source, rather than the subject matter.

On the other hand, the naked prohibition against disclosures is fairly characterized as a regulation of pure speech. Unlike the prohibition against the "use" of the contents of an illegal interception in §2511(1)(d),[10] subsection (c) is not a regulation of conduct. It is true that the delivery of a tape recording might be regarded as conduct, but given that the purpose of such a delivery is to provide the recipient with the text of recorded statements, it is like the

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tion of a content-neutral purpose be enough to save a law which, on its face, discriminates based on content." *Turner Broadcasting System, Inc.* v. *FCC*, 512 U. S. 622, 642 (1994).

[10] The Solicitor General has catalogued some of the cases that fall under subsection (d): "it is unlawful for a company to use an illegally intercepted communication about a business rival in order to create a competing product; it is unlawful for an investor to use illegally intercepted communications in trading in securities; it is unlawful for a union to use an illegally intercepted communication about management (or vice versa) to prepare strategy for contract negotiations; it is unlawful for a supervisor to use information in an illegally recorded conversation to discipline a subordinate; and it is unlawful for a blackmailer to use an illegally intercepted communication for purposes of extortion. See, *e.g.,* 1968 Senate Report 67 (corporate and labor-management uses); *Fultz* v. *Gilliam*, 942 F. 2d 396, 400 n. 4 (6th Cir. 1991) (extortion); *Dorris* v. *Absher*, 959 F. Supp. 813, 815–817 (M.D. Tenn. 1997) (workplace discipline), aff'd in part, rev'd in part, 179 F. 3d 420 (6th Cir. 1999). The statute has also been held to bar the use of illegally intercepted communications for important and socially valuable purposes. See *In re Grand Jury*, 111 F. 3d 1066, 1077–1079 (3d Cir. 1997)." Brief for United States 24.

delivery of a handbill or a pamphlet, and as such, it is the kind of "speech" that the First Amendment protects.[11] As the majority below put it, "[i]f the acts of 'disclosing' and 'publishing' information do not constitute speech, it is hard to imagine what does fall within that category, as distinct from the category of expressive conduct." 200 F. 3d, at 120.

VI

As a general matter, "state action to punish the publication of truthful information seldom can satisfy constitutional standards." *Smith* v. *Daily Mail Publishing Co.*, 443 U. S. 97, 102 (1979). More specifically, this Court has repeatedly held that "if a newspaper lawfully obtains truthful information about a matter of public significance then state officials may not constitutionally punish publication of the information, absent a need . . . of the highest order." *Id.*, at 103; see also *Florida Star* v. *B. J. F.*, 491 U. S. 524 (1989); *Landmark Communications, Inc.* v. *Virginia*, 435 U. S. 829 (1978).

Accordingly, in *New York Times Co.* v. *United States*, 403 U. S. 713 (1971) *(per curiam)*, the Court upheld the right of the press to publish information of great public concern obtained from documents stolen by a third party. In so doing, that decision resolved a conflict between the basic rule against prior restraints on publication and the interest in preserving the secrecy of information that, if disclosed, might seriously impair the security of the Na-

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[11] Put another way, what gave rise to statutory liability in this case was the information communicated on the tapes. See *Boehner* v. *McDermott*, 191 F. 3d 463, 484 (CADC 1999) (Sentelle, J., dissenting) ("What . . . is being punished . . . here is not conduct dependent upon the nature or origin of the tapes; it is speech dependent on the nature of the contents").

tion. In resolving that conflict, the attention of every Member of this Court was focused on the character of the stolen documents' contents and the consequences of public disclosure. Although the undisputed fact that the newspaper intended to publish information obtained from stolen documents was noted in Justice Harlan's dissent, *id.,* at 754, neither the majority nor the dissenters placed any weight on that fact.

However, *New York Times* v. *United States* raised, but did not resolve the question "whether, in cases where information has been acquired *unlawfully* by a newspaper or by a source, government may ever punish not only the unlawful acquisition, but the ensuing publication as well."[12] *Florida Star*, 491 U. S., at 535, n. 8. The question here, however, is a narrower version of that still-open question. Simply put, the issue here is this: "Where the punished publisher of information has obtained the information in question in a manner lawful in itself but from a source who has obtained it unlawfully, may the government punish the ensuing publication of that information based on the defect in a chain?" *Boehner*, 191 F. 3d, at 484–485 (Sentelle, J., dissenting).

Our refusal to construe the issue presented more broadly is consistent with this Court's repeated refusal to answer categorically whether truthful publication may ever be punished consistent with the First Amendment. Rather,

> "[o]ur cases have carefully eschewed reaching this ultimate question, mindful that the future may bring scenarios which prudence counsels our not resolving anticipatorily. . . . We continue to believe that the sensitivity and significance of the interests presented in

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[12] That question was subsequently reserved in *Landmark Communications, Inc.* v. *Virginia*, 435 U. S. 829, 837 (1978).

> clashes between [the] First Amendment and privacy rights counsel relying on limited principles that sweep no more broadly than the appropriate context of the instant case." *Florida Star*, 491 U. S., at 532–533.

See also *Landmark Communications*, 435 U. S., at 838. Accordingly, we consider whether, given the facts of this case, the interests served by §2511(1)(c) can justify its restrictions on speech.

The Government identifies two interests served by the statute— first, the interest in removing an incentive for parties to intercept private conversations, and second, the interest in minimizing the harm to persons whose conversations have been illegally intercepted. We assume that those interests adequately justify the prohibition in §2511(1)(d) against the interceptor's own use of information that he or she acquired by violating §2511(1)(a), but it by no means follows that punishing disclosures of lawfully obtained information of public interest by one not involved in the initial illegality is an acceptable means of serving those ends.

The normal method of deterring unlawful conduct is to impose an appropriate punishment on the person who engages in it. If the sanctions that presently attach to a violation of §2511(1)(a) do not provide sufficient deterrence, perhaps those sanctions should be made more severe. But it would be quite remarkable to hold that speech by a law-abiding possessor of information can be suppressed in order to deter conduct by a non-law-abiding third party. Although there are some rare occasions in which a law suppressing one party's speech may be justified by an interest in deterring criminal conduct by another, see, *e.g.*, *New York* v. *Ferber*, 458 U. S. 747 (1982),[13]

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[13] In cases relying on such a rationale, moreover, the speech at issue

this is not such a case.

With only a handful of exceptions, the violations of §2511(1)(a) that have been described in litigated cases have been motivated by either financial gain or domestic disputes.[14] In virtually all of those cases, the identity of the person or persons intercepting the communication has been known.[15] Moreover, petitioners cite no evidence that Congress viewed the prohibition against disclosures as a response to the difficulty of identifying persons making improper use of scanners and other surveillance devices and accordingly of deterring such conduct,[16] and there is no empirical evidence to support the assumption that the prohibition against disclosures reduces the number of

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is considered of minimal value. *Osborne* v. *Ohio*, 495 U. S. 103 (1990); *New York* v. *Ferber*, 458 U. S., at 762 ("The value of permitting live performances and photographic reproductions of children engaged in lewd sexual conduct is exceedingly modest, if not *de minimis*").

The Government also points to two other areas of the law– namely, mail theft and stolen property– in which a ban on the receipt or possession of an item is used to deter some primary illegality. Brief for United States 14; see also *post*, at 11. Neither of those examples, though, involve prohibitions on speech. As such, they are not relevant to a First Amendment analysis.

[14] The media respondents have included a list of 143 cases under §2511(1)(a) and 63 cases under §§2511(1)(c) and (d)– which must also involve violations of subsection (a)– in an appendix to their brief. The Reply Brief filed by the United States contains an appendix describing each of the cases in the latter group.

[15] In only 5 of the 206 cases listed in the appendices, see n. 14, *supra*, n. 17, *infra*, was the identity of the interceptor wholly unknown.

[16] The legislative history of the 1968 Act indicates that Congress' concern focused on private surveillance "in domestic relations and industrial espionage situations." S. Rep. No. 1097, 90th Cong., 2d Sess., 225 (1968). Similarly, in connection with the enactment of the 1986 amendment, one senator referred to the interest in protecting private communications from "a corporate spy, a police officer without probable cause, or just a plain snoop." 131 Cong. Rec. 24366 (1985) (statement of Sen. Leahy).

illegal interceptions.[17]

Although this case demonstrates that there may be an occasional situation in which an anonymous scanner will risk criminal prosecution by passing on information without any expectation of financial reward or public praise, surely this is the exceptional case. Moreover, there is no basis for assuming that imposing sanctions upon respondents will deter the unidentified scanner from continuing to engage in surreptitious interceptions. Unusual cases fall far short of a showing that there is a "need of the highest order" for a rule supplementing the traditional means of deterring antisocial conduct. The justification for any such novel burden on expression must be "far

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[17] The dissent argues that we have not given proper respect to "congressional findings" or to "'Congress' factual predictions.'" *Post*, at 10. But the relevant factual foundation is not to be found in the legislative record. Moreover, the dissent does not argue that Congress did provide empirical evidence in support of its assumptions, nor, for that matter, does it take real issue with the fact that in the vast majority of cases involving illegal interceptions, the identity of the person or persons responsible for the interceptions is known. Instead, the dissent advances a minor disagreement with our numbers, stating that nine cases "involved an unknown *or unproved* eavesdropper." *Post*, at 13–14, n. 9 (emphasis added). The dissent includes in that number cases in which the identity of the interceptor, though suspected, was not "proved" because the identity of the interceptor was not at issue or the evidence was insufficient. In any event, whether there are 5 cases or 9 involving anonymous interceptors out of the 206 cases under §2511, in most of the cases involving illegal interceptions, the identity of the interceptor is no mystery. If, as the proponents of the dry up the market theory would have it, it is difficult to identify the persons responsible for illegal interceptions (and thus necessary to prohibit disclosure by third parties with no connection to, or responsibility for, the initial illegality), one would expect to see far more cases in which the identity of the interceptor was unknown (and, concomitantly, far fewer in which the interceptor remained anonymous). Thus, not only is there a dearth of evidence in the legislative record to support the dry up the market theory, but what postenactment evidence is available cuts against it.

stronger than mere speculation about serious harms." *United States* v. *Treasury Employees*, 513 U. S. 454, 475 (1995).[18] Accordingly, the Government's first suggested justification for applying §2511(1)(c) to an otherwise innocent disclosure of public information is plainly insufficient.[19]

The Government's second argument, however, is considerably stronger. Privacy of communication is an important interest, *Harper & Row, Publishers, Inc.* v. *Nation Enterprises*, 471 U. S. 539, 559 (1985),[20] and Title III's restrictions are intended to protect that interest, thereby "encouraging the uninhibited exchange of ideas and information among private parties . . . ." Brief for United States 27. Moreover, the fear of public disclosure of private conversations might well have a chilling effect on private speech.

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[18] Indeed, even the burden of justifying restrictions on commercial speech requires more than "mere speculation or conjecture." *Greater New Orleans Broadcasting Assn., Inc.* v. *United States*, 527 U. S. 173, 188 (1999).

[19] Our holding, of course, does not apply to punishing parties for obtaining the relevant information unlawfully. "It would be frivolous to assert– and no one does in these cases– that the First Amendment, in the interest of securing news or otherwise, confers a license on either the reporter or his news sources to violate valid criminal laws. Although stealing documents or private wiretapping could provide newsworthy information, neither reporter nor source is immune from conviction for such conduct, whatever the impact on the flow of news." *Branzburg* v. *Hayes*, 408 U. S. 665, 691 (1972).

[20] "'The essential thrust of the First Amendment is to prohibit improper restraints on the *voluntary* public expression of ideas; it shields the man who wants to speak or publish when others wish him to be quiet. There is necessarily, and within suitably defined areas, a concomitant freedom *not* to speak publicly, one which serves the same ultimate end as freedom of speech in its affirmative aspect.'" *Harper & Row, Publishers, Inc.* v. *Nation Enterprises*, 471 U. S., at 559 (quoting *Estate of Hemingway* v. *Random House, Inc.*, 23 N. Y. 2d 341, 348, 244 N. E. 2d 250, 255 (Ct. App. 1968)).

> "In a democratic society privacy of communication is essential if citizens are to think and act creatively and constructively. Fear or suspicion that one's speech is being monitored by a stranger, even without the reality of such activity, can have a seriously inhibiting effect upon the willingness to voice critical and constructive ideas." President's Commission on Law Enforcement and Administration of Justice, The Challenge of Crime in a Free Society 202 (1967).

Accordingly, it seems to us that there are important interests to be considered on *both* sides of the constitutional calculus. In considering that balance, we acknowledge that some intrusions on privacy are more offensive than others, and that the disclosure of the contents of a private conversation can be an even greater intrusion on privacy than the interception itself. As a result, there is a valid independent justification for prohibiting such disclosures by persons who lawfully obtained access to the contents of an illegally intercepted message, even if that prohibition does not play a significant role in preventing such interceptions from occurring in the first place.

We need not decide whether that interest is strong enough to justify the application of §2511(c) to disclosures of trade secrets or domestic gossip or other information of purely private concern. Cf. *Time, Inc.* v. *Hill*, 385 U. S. 374, 387–388 (1967) (reserving the question whether truthful publication of private matters unrelated to public affairs can be constitutionally proscribed). In other words, the outcome of the case does not turn on whether §2511(1)(c) may be enforced with respect to most violations of the statute without offending the First Amendment. The enforcement of that provision in this case, however, implicates the core purposes of the First Amendment because it imposes sanctions on the publication of truthful information of public concern.

In this case, privacy concerns give way when balanced

against the interest in publishing matters of public importance. As Warren and Brandeis stated in their classic law review article: "The right of privacy does not prohibit any publication of matter which is of public or general interest." The Right to Privacy, 4 Harv. L. Rev. 193, 214 (1890). One of the costs associated with participation in public affairs is an attendant loss of privacy.

> "Exposure of the self to others in varying degrees is a concomitant of life in a civilized community. The risk of this exposure is an essential incident of life in a society which places a primary value on freedom of speech and of press. 'Freedom of discussion, if it would fulfill its historic function in this nation, must embrace all issues about which information is needed or appropriate to enable the members of society to cope with the exigencies of their period.'" *Time, Inc.* v. *Hill*, 385 U. S., at 388 (quoting *Thornhill* v. *Alabama*, 310 U. S. 88, 102 (1940)).[21]

Our opinion in *New York Times Co.* v. *Sullivan*, 376 U. S. 254 (1964), reviewed many of the decisions that settled the "general proposition that freedom of expression upon public questions is secured by the First Amendment." *Id.*, at 269; see *Roth* v. *United States*, 354 U. S. 476, 484 (1957); *Bridges* v. *California*, 314 U. S. 252, 270 (1941); *Stromberg* v. *California*, 283 U. S. 359, 369 (1931). Those cases all relied on our "profound national commitment to the principle that debate on public issues should be uninhibited, robust and wide-open," *New York Times*, 376 U. S., at 270; see *Terminiello* v. *Chicago*, 337 U. S. 1, 4 (1949); *De Jonge* v. *Oregon*, 299 U. S. 353, 365 (1937); *Whit-*

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[21] Moreover, "our decisions establish that absent exceptional circumstances, reputational interests alone cannot justify the proscription of truthful speech." *Butterworth* v. *Smith*, 494 U. S. 624, 634 (1990).

ney v. *California*, 274 U. S. 357, 375–376 (1927) (Brandeis, J., concurring); see also *Roth*, 354 U. S., at 484; *Stromberg*, 283 U. S., at 369; *Bridges*, 314 U. S., at 270. It was the overriding importance of that commitment that supported our holding that neither factual error nor defamatory content, nor a combination of the two, sufficed to remove the First Amendment shield from criticism of official conduct. *Id.,* at 273; see also *NAACP* v. *Button*, 371 U. S. 415, 445 (1963); *Wood* v. *Georgia*, 370 U. S. 375 (1962); *Craig* v. *Harney*, 331 U. S. 367 (1947); *Pennekamp* v. *Florida*, 328 U. S. 331, 342, 343, n. 5, 345 (1946); *Bridges*, 314 U. S., at 270.

We think it clear that parallel reasoning requires the conclusion that a stranger's illegal conduct does not suffice to remove the First Amendment shield from speech about a matter of public concern.[22] The months of negotiations over the proper level of compensation for teachers at the Wyoming Valley West High School were unquestionably a matter of public concern, and respondents were clearly engaged in debate about that concern. That debate may be more mundane than the Communist rhetoric that inspired Justice Brandeis' classic opinion in *Whitney* v. *California*, 274 U. S., at 372, but it is no less worthy of constitutional protection.

The judgment is affirmed.

It is so ordered.

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[22] See, *e.g.*, *Florida Star* v. *B. J. F.*, 491 U. S. 524, 535 (1989) (acknowledging "the 'timidity and self-censorship' which may result from allowing the media to be punished for publishing truthful information").