68345-4

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No. 68345-4-I

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

SCOTT AKRIE, et al.,

Respondants

v.

JAMES GRANT, et al.,

Appellants.

RESPONDANTS ANSWER

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I. INTRODUCTION

Defendants desperately wanted a sworn declaration from Netlogix former employee Jason Dillon in hopes of damaging Netlogix' pending motion for summary judgment in the federal court. Dillon was no longer connected to Netlogix so he could freely speak with them if he chose. But Mr. Dillon refused to sign a sworn declaration for the defendants. However, unbeknownst to Mr. Dillon, Jim Grant an attorney at the Davis Wright law firm blatantly lied to him during their phone conversations and had them recorded. Without a signed declaration, Grant filed the unsworn, illegally obtained transcript of the recording in violation of Ninth Circuit precedent, *see Feldman v. Allstate,* 322 F.3d 660, 666-667 (9th Cir. 2003). The illegal recording violated the clear terms of the Privacy Act, RCW 9.73.030. Hoping that at least some Court would not ignore what is clearly unethical and illegal conduct, Netlogix and Scott Akrie[1] filed suit for violations of the Privacy Act. (CP 1-12). The law interpreting the SLAPP statute is sparse, but Washington's statute is modeled directly after the California SLAPP statute (*See Aronson v. Dog Eat Dog Films, Inc.,* 738 F Supp 2d, 1104, 1109 (W.D Wa 2010)(Washington statute mirrors California statute)), which has found as settled law that illegal recording,

[1] Jason Dillon sought to joint the suit but the Court disallowed the amendment to the complaint to add him because of the SLAPP motion. Thereafter Dillon filed a separate lawsuit alleging violations of the privacy act, with the hope that a Court will not ignore the rule of law simply because it does not with to admonish attorney misconduct.

wiretapping, and invasion of privacy even by lawyers in a midst of a lawsuit is not conduct protected by the SLAPP statues. *Gerbosi v Gaims*, 122 Cal Rptr 3d 73, 82 (Cal. App. 2011)[2]. Rather than being punished by submitting rank hearsay, and the fruits of an illegal act, Mr. Grant and the rest of the defendants were rewarded for their exercise of "First Amendment Rights" with an award of $10,000 under SLAPP and over $20,000 in attorney's fees. (CP 179-180). Now, defendants seek further reward and $10,000 for each defendant even though none of them were actually engaging in activity the SLAPP meant to protect, unless of course the Privacy Act, noted as one of the strongest in the nation by this Court, is rendered meaningless because it does not apply to lawyers.

This case, therefore, is about whether the privacy act has been superseded by the SLAPP statute. The trial court decided that lawyers can avoid the penalties of the Privacy Act by using the SLAPP statute.[3] The Court found that Netlogix and Mr. Akrie were liable for SLAPP penalties for protesting the filing of an illegally recorded statement from a witness,

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[2] The *Gaims* decision is attached hereto in the appendix. The decision is on four corners and demonstrates conclusively that illegal recording of conversations even when done by a large powerful law firm do not constitution the exercise of freedom of speech.

[3] Netlogix had sought to appeal the trial court's order but the threat of attorneys fees was simply too much of a deterrent considering that the Court awarded six hours of fees for discovery on the simple issue of whether a corporation is a person, and two hours for counsel to determine what fees should be recovered in the fee bill. If Netlogix were to appeal and be unsuccessful, it is assumed that opposing counsel's bill would exceed six figures, so the appeal was dropped.

who testified that he was not told he was being recorded, and who also recanted everything in the taping. Since Netlogix and Mr. Akrie were not a party to the telephone conversation, but were merely harmed by its introduction into evidence and its publication on a website, the SLAPP statute apparently applied and a $10,000 penalty assessed, and then the claims dismissed for lack of standing. (CP 177-178). The Court limited the penalty, presumably because of the odious conduct of the attorneys involved, and the message sent to the legal community by these rulings: Feel free to violate the privacy statute with any lawyer or witness or anyone for that matter, as you may exonerate yourself by filing the fruits of the illegal conduct.

II. ASSIGNMENTS OF ERROR

Whether the trial court was correct in only assessing a $10,000 penalty, when the SLAPP violation was based upon an attorney filing the fruits of an illegal recording in the Federal Court and to a media outlet, and the Privacy Act claims were dismissed for lack of standing?

III. ISSUES RELATING TO ASSIGNMENTS OF ERROR

Does the SLAPP statute render the Privacy Act meaningless when it can be defeated by simply filing a transcript of an illegal recording into the Court system?

Whether each defendant dismissed from a case is entitled to $10,000 when not all defendants actually engaged in protected activity?

Is recording a witness' telephone conversation protected activity when it's done by a lawyer?

IV. STATEMENT OF THE CASE

On August 25, 2011, Jim Grant and Cassandra Kennan set up a recorded interview of a non-party witness in a lawsuit, Mr. Jason Dillon. (CP1-12, 63-79). Mr. Dillon was a disgruntled former employee of Netlogix, a company that was involved in a lawsuit with Mr. Grant and Ms. Kennan's client T-Mobile. Dillon was in central California. Keenan, an attorney working for Mr. Grant, asked Mr. Dillon to call the Seattle Davis Wright offices by telephone at a specific time and talk to her and Mr. Grant. When Dillon called in, Mr. Grant told him that they had a third person in the room, Mr. Grant's assistant "Thad" who would be "writing stuff down." (CP63-79). This was a lie, a violation of several rules of professional conduct, and simply unethical. (*Id*; CP 133).

"Thad" turned out to be certified court reporter Thad Byrd, an employee of Seattle Deposition Reporters, Inc. -- not Mr. Grant's "assistant." (CP 63-79). "Thad" was not just "writing stuff down," he was using an electronic court reporter transcription machine to take a

verbatim recording of the entire conversation. Mr. Grant's statement to Mr. Dillon was not truthful. See RPC 4.1(a) ("a lawyer shall not make a false statement of material fact or law to a third person."). Mr. Grant later sent Mr. Dillon a declaration to sign. Mr. Dillon did not feel comfortable signing the declaration Grant sent. Thereafter a second phone conference was scheduled. On September 16, 2011, Mr. Dillon called the Davis Wright offices again. In the room this time was another certified Court Reporter, Mark Hovila, with his court reporter's transcription machine. (CP 32-45, 63-64). The conversation included Mr. Grant, Ms. Kennan and Mr. Dillon. This time nobody advised Mr. Dillon of the presence of Mr. Hovila, or his machine. (CP 32-45).

Mr. Dillon refused to sign a declaration. Thereafter Grant edited the recordings, filed portions of them in Federal Court, while at the same time claiming privileged work product protection for the portions he did not want to put in a court record or have publicized. (CP 102-148).

When Mr. Dillon found out that he had been deceived by Mr. Grant, he wrote the following to Mr. Grant:

> Mr. Grant and Ms. Keenan: I am absolutely OUTRAGED by the two of you deceivingly recording our telephone conversation without my consent on August 25, 2011 at 2:14 PM…California and Washington law both require mutual consent to recording a telephone conversation. I now..realize that

> YOUR represented "assistant Thad" taking notes for you was actually Thad Byrd, Certified Court Reporter No. 2052 a... and NOT your "assistant" or even an employee of Davis Wright Tremaine,....**it was clearly a misleading lie on your behalf**.....
>
> ..I made it VERY clear to Ms. Keenan that I would need to **consult an attorney** if the two of you needed something formal/documented..:

(CP 138-139).

Whether Mr. Hovila also had a tape recorder on the table, or whether a tape recording was made of the September 16, 2011 conversation, is unknown at this time. Whether Mr. Byrd recorded the entire August 26, 2011 conversation is unknown at this time. Whether these tape recordings were kept or destroyed is unknown at this time. All those issues were the subject of outstanding discovery requests for which a motion to compel responses has been filed but the Court stayed because a SLAPP motion had been filed.

Both Mr. Hovila and Mr. Byrd prepared and signed sworn statements verifying the verbatim accuracy of the recorded transcripts. They also claimed to be independent and not employees of counsel in their signed statements, in direct contradiction to what Mr. Grant had told Dillon. In short, they stood idly by and violated their oaths as certified

court reports in order to allow Grant to maintain his ruse of Dillon. Shameful conduct all around.

When Mr. Dillon became aware that the conversations had been recorded he demanded Mr. Grant give him a copy of the recordings. (CP 106-126). Mr. Grant refused claiming the conversations were private and privileged "work product." *Id.* Netlogix demanded copies, and Mr. Grant made the same claim of privacy and privileged "work product." (CP 106-124, 144-148). Netlogix and its principle, Mr. Akrie, filed suit in state court alleging violations of the Privacy Act as both suffered damage from the illegal recordings of Mr. Dillon. (CP 1-12). Mr. Dillon sought to join the lawsuit but his addition was denied as defendants filed an anti-SLAPP motion staying the case, alleging that recording a witness without permission, in violation of all ethical rules, the rules of evidence and Washington law, were protected first amendment activities protected by the SLAPP law. (CP 49-57). The trial court agreed, exonerating Mr. Grant's behavior, and essentially setting a new standard of conduct i.e., protect yourself from the Privacy Act, by filing the fruits of illegal conduct into the Court system. (CP175-180, 177-178).

The trial court found that the plaintiffs did not have standing to bring a privacy act violation claim, and then granted the SLAPP motion. The Court awarded $10,000 in damages and then $20,137.45 in attorney's

fees. (CP 179-180). Plaintiffs initially filed an appeal in this court, but were forced to withdraw the appeal as the threat of a future attorney's fee award is too much of a deterrent to bring forth the very important policy issue, which is whether SLAPP supersedes the direct language of the Privacy Act. (CP 181-187, 197-203). Thereafter Defendants appealed, seeking further reward from this Court for their illegal conduct, and have requested further punitive damages under the statute.

V. SUMMARY OF ARGUMENT

This was not a SLAPP case, and due to the huge penalties and attorney's fees awarded under the SLAPP statute plaintiffs are essentially given no avenue to appeal an unsupportable trial court ruling. The statute was turned on its head in this case, and it will continue to be abused if it is not stopped and the penalties are not limited. The SLAPP statute prevents persons from being the victim of a meritless lawsuit in order to curtail their right to free speech and petition and engaging in protected activity. A cause of action:

> "arising from protected activity" means that the defendant's acts underpinning the plaintiff's cause of action involved an exercise of the right of petition or free speech. (See City of Cotati v. Cashman (2002) 29 Cal.4th 69, 78 [124 Cal. Rptr. 2d 519, 52 P.3d 695].) It does not mean that the plaintiff filed his or her lawsuit "in response to" the defendant's acts. (Ibid.) A defendant does not establish that a cause of action "arises from" an act in furtherance of the right of petition or free speech merely by showing that the plaintiff filed his or her lawsuit in retaliation for the defendant's petitioning or

> speech activities. The defendant must establish that the plaintiff's cause of action is actually based on conduct in exercise of those rights. (See, e.g., ComputerXpress, Inc. v. Jackson (2001) 93 Cal.App.4th 993, 1002 [113 Cal. Rptr. 2d 625].) In determining whether the first step has been established, i.e., the "arising from" element of the anti-SLAPP statute, a court must consider the pleadings and any supporting and opposing affidavits stating the facts upon which alleged liability is based. (Navellier v. Sletten (2002) 29 Cal.4th 82, 89 [124 Cal. Rptr. 2d 530, 52 P.3d 703].)

Gerbosi v. Gaims, Weil, West & Epstein, LLP, 122 Cal Rptr 3d. at 80.

The defendants successfully misidentified this case as one involving the free exercise of *speech* in a court of law, whereas this case was not about that at all; it was and remains about the illegal *recording* of a conversation that took place in an attorney's office. That is not protected activity. See *Gaims*, at 81. The fact that they subsequently took the fruits of that illegal conduct, the illegally recorded transcript and put it into the public record in a court case does not retroactively alter the fact that it was illegal conduct in the first place, conduct which our legislature has addressed with specific statutory civil and criminal penalties. In that sense, this case is no different than if the defendants had broken into someone's home or office in order to acquire evidence they later used at trial, or illegally placed a wiretap on an a witnesses phone then claimed that the mere use of the transcript or evidence at trial was their protected speech that immunized them from liability for the burglary or illegal

wiretapping under SLAPP. The primary difference is here the Court has somehow excused the conduct because a lawyer did it, and essentially made it impossible to appeal because $20,137.45 in attorney's fees were awarded in addition to the $10,000 penalty. In short, in this state, if you try to hold an attorney accountable for taping witness interviews without their permission, you need to pay that attorney a lot of money. What should be a joke, is now reality, and a new standard of care for lawyers. If you ever have a witness that may not ultimately provide you with a declaration you want, tape the conversation and use it as if it is the same.

Moreover, this is not a claim where the SLAPP provisions apply because the plaintiffs' claims do not challenge the defendants' right to free speech in a political forum, which is the purpose of the SLAPP protection. This case is about the *illegal making of, not the subsequent use or presentation* of the recordings in the federal court lawsuit. SLAPP does not make illegally recorded statements legal. SLAPP does not repeal Washington's Privacy Statute and SLAPP is not a defense to a claim under the Privacy Statute, with the exception of this court case apparently. To be perfectly clear: If the recordings were legally made with Jason Dillon's valid consent, then this case would not have been filed because the conduct would not have violated the Privacy Statute.

On the merits, the defendants did not even contest the facts relevant to these violations of RCW 9.73.030 with *admissible evidence.* Indeed these are the uncontested facts:

- Mr. Dillon did not give Mr. Jim Grant or anyone else the permission to record the telephone conversations of August 25, or September 16, 2011. (CP 63-64).

- Jim Grant lied to Mr. Dillon about who "Thad" was, falsely stating to Mr. Dillon that he was an assistant taking notes when in truth he was a certified court reporter using an electronic transcription machine to take a verbatim recording of the conversation. *(Id.)*

-Mr. Dillon did not give his consent to the verbatim recording of the conversations. (CP 63).

These undisputed facts establish the fact that Jim Grant broke the law, RCW 9.73.030. Further, nothing in the defendants briefing below could be fairly characterized as an affirmative or other legal defense to his violation of RCW 9.73.030, it's just a litany of excuses and reasons why he apparently thought he should break the law, more commonly described as his "motive" for breaking the law. Because he violated this statute, "any person" injured in his or her business or property should have been entitled to bring a lawsuit for damages for the illegal recording, according the plain language of RCW 9.73.060.

According to our legislature, SLAPP is intended to address protect the free exercise of *speech* in political forums, not to immunize illegal *recordin*g- even where the perpetrator claims a lofty motive for the crime. RCW 4.24.525, notes 2010 c 118. Neither is SLAPP intended to authorize an attorney to violate the Rules of Professional Conduct by lying to a witness so as to facilitate the illegal recording,[4] even if the attorney claims a lofty motive for that too.

A defendant filing an anti-SLAPP motion bears the threshold burden of showing that the complaint arises from *protected activity*. *See Aronson v. Dog Eat Dog Films Inc.,* 738 F.Supp.2d 1104, 1110 (WDWA 2010). Making a false statement to a witness to induce him to talk so one can secretly and illegally record the conversation is not a strong showing of *protected activity*, it's strong evidence of a gross misdemeanor. *See Gaims, supra*. Claiming that the illegal conduct was done to further a person's interest in a lawsuit does not convert it into a "protected activity." This was not a SLAPP case but the penalties inflicted on a party in a SLAPP motion make it impossible to appeal. This Court should not insulate such activities even more by multiplying the penalty, particularly when some of the defendants in the underlying case didn't actually file the

[4] Mr. Dillon made it clear in his declaration, (CP 63-79), "I was tricked by Mr. Grant's false statement into continuing the telephone conversation. In the September 16, 2011 phone call, neither Mr. Grant nor Ms. Keenan told me that it was being recorded or that a court reporter was present. I did not consent to either recording."

illegal recordings, which actually make them "protected speech" but instead were simply privy to the illegal acts and engaged in them.

VI. ARGUMENT

A. This Was Not A Legitimate SLAPP Claim: The Current Deterrents In The Statute Preclude Appeal

An attorney lies to a witness, has their conversation recorded, and then files the recording when the witness refuses to sign a declaration. As punishment for violating the ethical rules of this bar, and the ABA, he and those that engaged in the illegality and unethical behavior were rewarded with a dismissal of a lawsuit in their clients favor, $10,000 in punitive damages, and attorney's fees and costs in the amount of $20,137.45. Defendants now seek to tack on further $10,000 penalties claiming all defendants are entitled to it. However, the parties all had the same counsel and were virtually indistinguishable. Seattle Deposition Reporters were not even listed in the SLAPP motion, but were tacked in under the broad claim of defendants. The Court should distinguish, however, between defendants who actually engage in "protected activity" and those that were merely dismissed for plaintiffs not having standing. If the protected activity is filing an illegally recorded conversation then only one person actually filed it. The other just helped illegally record, and avoided liability or standing ground. The threat of a further attorney's fee award

made an appeal a practical impossibility as it would lead to bankruptcy. Illegal conduct should not be considered an exercise of free speech or engaging in protected activity under SLAPP. The *Gaims* court had it right:

> Accordingly, the wiretapping and privacy invasions alleged by Gerbosi do not "arise from" any protected activity by Gaims on behalf of Pfeifer. Gerbosi's complaint alleges that Gaims unlawfully listened in on his private conversations, and these allegations are the beginning and end of the firm's anti-SLAPP motion. Gaims's status as a lawyer, unrelated to any representation of any client in relationship to Gerbosi does not bring Gaims under the protective umbrella for acts in furtherance of protected "petitioning" activity. In sum, the alleged criminal conduct does not fall within "protected activity" as defined by the anti-SLAPP statute. (*Novartis Vaccines & Diagnostics, Inc. v. Stop Huntingdon Animal Cruelty USA, Inc.* (2006) 143 Cal.App.4th 1284, 1289–1296 [50 Cal. Rptr. 3d 27] (Novartis Vaccines) [a plaintiff's claims for damages allegedly caused by criminal vandalism does not implicate the anti-SLAPP statute even where it is shown that the defendant's act could be deemed related to protesting activity].)

See Gaims, at 80-81.

At some point, some court must stand up for the rule of law otherwise, attorneys should immediately start taping every phone conversation to ensure witness compliance as they will have immunity from suit and in fact get rewarded for the conduct as was the case here.

The issue on appeal now is basically how much of a deterrent is needed to protect those asserting their first amendment rights from those trying to stifle their rights through a lawsuit. The SLAPP attorney's fees

provision alone is a huge deterrent. In fact, it is the reason the underlying case did not get appealed. Even the trial judge must recognize the absurdity of the actions of the Appellants here, which is why only $10,000 was awarded. There was no first amendment protection here and in fact not all of the defendants bringing the motion actually engaged in what the trial court found as protected activity, which was filing the illegal recording in Court. All defendants were dismissed but that was based upon a lack of standing finding under the Privacy Act, brought as a CR 12(b)(6) motion at the same time, as opposed to a finding that they all were engaging in protected activity. The standing issue was likely wrong, but with the threat of SLAPP attorney's fees plaintiffs wronged by a SLAPP decision are left with no options.

As this court is aware, Washington's Privacy Act makes it a criminal offense to either intercept or record a private communication without the specific consent of all the parties to the conversation. It is one of, if not the most protective Privacy Acts ever promulgated in the United States. Clandestine recording of a witness interview is both illegal and unethical.[5] "Washington's privacy act, chapter 9.73 RCW is one of the

[5] The "clandestine taping" of a telephone conversation *by an attorney*, as was done in this case, also "violates the American Bar Associations' Model Rules of Professional Conduct. *Chapman & Cole v. Itel Container Int'l B.V.*, 865 F.2d 676, 686 (5th Cir. 1989), *cert. denied*, 493 US 872 (1989).

most restrictive electronic surveillance laws ever promulgated." *State v. O'Neill*, 103 Wn.2d 853, 878, (1985).

> "Intercepting or recording telephone calls violates the privacy act except under narrow circumstances, and we will generally presume that conversations between two parties are intended to be private."

State v. Modica, 164 Wn.2d 83, 87-88 (2008).

RCW 9.73.030. Intercepting, recording, or divulging private communication-Consent required-Exceptions.

(1) ***Except*** *as otherwise provided in* ***this chapter [RCW 9.73],*** it shall be unlawful for any individual, partnership, corporation,

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> In the instant case, the record clearly demonstrates that counsel for the appellant clandestinely recorded conversations with witnesses. While this practice violates no law,[5] the Code of Professional Conduct imposes a higher standard that mere legality. The American Bar Association's Committed on Ethics and Professional Responsibility has held that the recording of conversations of witnesses without their consent is unethical. See ABA Committee on Professional Responsibility, Formal Opinions, No. 337 (1974); Id., Informal Opinions, No. 1320 (1975)(refusing to reconsider Formal Opinion No. 337). See also NYSBA Committee on Professional Ethics, Opinions No. 328 (1974)."

Parrott v Wilson, 707 F.2d 262, 1271 (11th Cir 1983).

association, or the state of Washington, its agencies, and political subdivision to intercept, or record any:

(a) **Private communication transmitted by telephone,** telegraph, radio, or other device between two or more individuals between points within or without the state by any device electronic or otherwise designed to record and/or transmit said communication regardless how such device is powered or actuated, without first obtaining the consent of all the participants in the communication;

(b) **Private conversation,** by any device electronic or otherwise designed to record or transmit such conversation regardless how the device is powered or actuated without first obtaining the consent of all the persons engaged in the conversation.

.....

(2) Where consent by all parties is needed pursuant to this chapter, consent shall be considered obtained whenever one party has announced to all other parties engaged in the communication or conversation, or in any reasonably effective manner, that such communication or conversation is about to be recorded or transmitted: PROVIDED, that if the conversation is to be recorded that said announcement shall also be recorded.

RCW 9.73.060 Violating right of privacy-Civil action-Liability for damages.

Any person who, directly or by means of a detective agency or any other agent, violates the provisions of this chapter [RCW 9.73] shall be subject to legal action for damages, to be brought by any other person claiming that a violation of this statute has injured his or her business, his or her person, or his or her reputation. A person so injured shall be entitled to actual damages, including mental pain and suffering endured by him or her on account of violation of the provision of this chapter, or liquidated damages computed at the rate of one hundred dollars a day for each violation, not to exceed one thousand dollars, and a reasonable attorney's fee and other costs of litigation.

RCW 9.73.030-060. Emphasis added.

The plaintiffs were harmed by the recordings in this case because they can be disseminated on the whims of the lawyer who illegally made them even though the witness retracted every statement.

B. Recordings Made Using A Transcription Machine Are Covered By The Privacy Act

The Privacy Act prohibits recordings made by "any device electronic or otherwise designed to record . . . regardless of how the device is powered or actuated." In keeping with the broad protection for privacy afforded under the Privacy Act, the Washington Court even included computers writing the definition of recording devices. *State v. Townshend*, 147 Wn.2d 666, 674 (2002). Here, the defendants used a stenographic machine, which is precisely the machine that is designed to record hearings in courtrooms and in depositions and has been so doing for scores of years. There is no serious argument that a stenographic machine, designed to record and operated by a certified court reporter with the intention of making a verbatim recording of a conversation, does not fall within the scope of the Privacy Act.

Further, there was a tape recording made of at least part of the first private conversation. This is admitted.[6]

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[6] Ms. Keenan claimed that Mr. Grant instructed the reporter to stop recording and erase the tape, but the recording itself is devoid of any of this conversation or instruction. Further, SDR has never responded to the discovery indicating whether this was done or

Again in keeping with the Washington Court's oft repeated policy of the Privacy Act being interpreted broadly to protect communications, it held that even communications made by an attempted child rapist to a fictitious victim were deemed "private" as *a matter of law*. *State v. Townshend*, 147 Wn.App at 674. Defendants curiously cited *Townshend* for the proposition that the communication was not private, but *Townshend* held just the opposite. In *Townshend,* an individual who thought he was having a specific communication with a minor for immoral purposes, was nevertheless having a "private" conversation within the Act, regardless of the fact that the minor was a police officer. The decision of the trial court was simply wrong. Defendants have gotten away with illegal activity.

C. The Case Law Cited By Defendants Is Unpublished And Unpersuasive

There is no published case which would render the Honorable Judge Andrus' ruling that limited the punitive award to just the $10,000. The judge had reasons for limiting the award, presumably because of the odious nature of the defendants conduct in the case, so as to not reward them any further. Judge Andrus believed that plaintiffs in this case did not have standing under the Privacy Act to file a claim because they were not

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not, and if so, how Mr. Byrd went on to make corrections and changes to the recorded transcript. From memory? (CP 136-143).

involved in the private phone conversation. So plaintiffs could not meet their burden. Additionally Judge Andrus found the filing of the transcript to be the protected activity. Only one person actually did the filing. Seattle Deposition reporters didn't engage in any protected activity at all, it merely supplied the court reporters who illegally recorded and then transcribed the conversation, in violation of the ethical rules of Court reporters and proving that their impartiality is questionable, but they didn't file anything into the Federal Courts. In fact, they refused to turn over copies of the transcripts to the plaintiffs when asked.

The cases cited by the defendants are unpublished and should not be considered by this Court. Additionally the facts in those cases are remarkably different from the situation here. In *Castillo v City of Seattle*, the defendants were sued for defamation, but their actions were not illegal, they made complaints to their superiors in an employment context and also were interviewed by a news channel about morale in the Seattle Fire Department, where they offered their opinions and discussed problems in the department. They were simply exercising their first amendment rights, they were not illegally recording conversations, lying to a witness and violating ethical rules. In *Eklund v. City of Seattle*, the defendants investigated and reported a ticket-fixing scheme in the Seattle Municipal Court. They reported illegal conduct; they didn't commit it.

Comparing the situation in this case where defendants seek reward for unethical and illegal conduct, with the above cases is apples and oranges. The defendants here are not champions for the first amendment, they are simply persons who chose to violate the Washington Privacy Act, and got away with it – nothing more. This Court should respect Judge Andrus' ruling, as the plaintiffs have been required to do. There is no justification for further penalty in this case.

VII. CONCLUSION

The defendants should receive no further reward for their conduct. None of them engaged in any protected activity as actually contemplated by the SLAPP statute. Grant deceived a witness and recorded a conversation. When he couldn't get a signed, sworn declaration, he filed the unsworn, inadmissible, illegal recording. At what point will a court actually acknowledge that such activities should not be the standard of conduct for lawyers?

DATED this 13th day of June, 2012 at Seattle, Washington.

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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury in Washington State that on June 13, 2012, the foregoing was filed through the FIRST CLASS MAIL and served FIRST CLASS MAIL on all counsel of record.

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