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**SUPREME COURT
OF THE STATE OF WASHINGTON**

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JASON DILLON, an individual

Respondent,

v.

SEATTLE DEPOSITION REPORTERS, LLC, a Washington company;
DAVIS WRIGHT TREMAINE LLP, a Washington company; JAMES
GRANT and JANE DOE GRANT, individually and the marital
community composed thereof,

Petitioners.

On Appeal from the Court of Appeals, Division One
No. 69300-0

**BRIEF OF *AMICUS CURIAE*
WASHINGTON COURT REPORTERS ASSOCIATION**

Filed *u*
Washington State Supreme Court

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TABLE OF CONTENTS

| | |
|--|----|
| TABLE OF AUTHORITIES | ii |
| I. IDENTITY AND INTEREST OF <i>AMICUS CURIAE</i> | 1 |
| II. ISSUE ADDRESSED BY AMICUS | 1 |
| III. STATEMENT OF THE CASE | 1 |
| III. ARGUMENT | 2 |
| A. “Record” As Used in the State’s Privacy Act Does not Include Taking Notes | 2 |
| 1. Neither SDR nor the DWT lawyers “intercepted” the conversations..... | 3 |
| 2. Participants who take notes do not “record” a conversation. | 5 |
| B. There are Privacy-Driven and Practical Reasons for Distinguishing Between “Recording” and Note-Taking..... | 9 |
| 1. “Recording” should only encompass capturing the conversation in a way that allows for later aural disclosure..... | 9 |
| 2. Voice recordings implicate different privacy interests than transcripts or summaries..... | 12 |
| 3. Court reporters and others regularly engage in note-taking without securing the express consent of those involved..... | 15 |
| C. First Amendment Concerns Counsel in Favor of a Narrow Interpretation of the Term “Record”..... | 18 |
| IV. CONCLUSION..... | 20 |

TABLE OF AUTHORITIES

Cases

| | |
|---|--------|
| <i>ACLU v. Alvarez</i> , 679 F.3d 583 (7th Cir. 2012) | 17, 18 |
| <i>Boyce v. Timmerman-Cooper</i> , Case No. 3:12-cv-285, 2013 U.S. Dist. LEXIS 10284, *14 (S.D. Ohio Jan. 25, 2013) | 9 |
| <i>CBS, Inc. v. Lieberman</i> , 439 F. Supp. 862 (N.D. Ill. 1976) | 18 |
| <i>City of Bellevue v. Lorang</i> , 140 Wn.2d 19, 992 P.2d 496 (2000) | 17 |
| <i>City of Seattle v. Winebrenner</i> , 167 Wn.2d 451, 219 P.3d 686 (2009) | 16, 17 |
| <i>Dietemann v. Time, Inc.</i> , 449 F.2d 245 (9th Cir. 1971) | 13 |
| <i>Estes v. Texas</i> , 381 U.S. 532, 85 S. Ct. 1628, 12 L. Ed. 2d 543 (1965) | 18 |
| <i>Kearney v. Kearney</i> , 95 Wn. App. 405, 974 P.2d 872 (1999) | 8 |
| <i>People v. Melongo</i> , 6 N.E.3d 120, 379 Ill. Dec. 43, 2014 IL 114852 (Ill. 2014) | 19 |
| <i>People v. Wyrick</i> , 77 Cal.App.3d 903, 144 Cal. Rptr. 38 (1978) | 6, 20 |
| <i>Ribas v. Clark</i> , 38 Cal. 3d 355, 696 P.2d 637, 212 Cal. Rptr. 143 (1985) | passim |

| | |
|--|-----------|
| <i>Sanders v. American Broadcasting Companies</i> , 20 Cal. 4th 907, 978 P.2d 67, 85 Cal. Rptr. 2d 909 (1999) | 12, 13 |
| <i>Sigma Delta Chi v. Speaker, Maryland House of Delegates</i> , 270 Md. 1, 310 A.2d 156 (Md. 1973) | 18 |
| <i>State v. Christensen</i> , 153 Wn.2d 186, 102 P.3d 789 (2004) | 4 |
| <i>State v. Corliss</i> , 67 Wn. App. 708, 838 P.2d 1149 (1992) | 3, 4 |
| <i>State v. Knobel</i> , 97 Ore. App. 559, 777 P.2d 985 (1989) | 6, 11, 20 |
| <i>State v. O'Brien</i> , 774 A.2d 89 (R.I. 2001) | 12 |
| <i>State v. Roden</i> , 179 Wn.2d 893, 321 P.3d 1183 (2014) | 3 |
| <i>State v. Townsend</i> , 147 Wn.2d 666, 57 P.3d 255 (2002) | 8, 9 |
| <i>The New York Times Co. v. NASA</i> , 920 F.2d 1002, 287 U.S. App. D.C. (D.C. Cir. 1990) | 13 |
| <i>United States v. Beckham</i> , 789 F.2d 401 (6th Cir. 1986) | 18 |
| <i>Vera v. O'Keefe</i> , 791 F. Supp. 2d 959 (S.D. Cal. 2011) | 6 |
| <u>Statutes</u> | |
| 28 CFR §§ 35.104 | 16 |
| RCW 18.145.020 | 9, 16 |
| RCW 9.73.030 | 1, 3, 18 |

Other Authorities

Diane Zimmerman, *I Spy: The Newsgatherer Under Cover*, 33 U RICH. L. REV. 1185, 1208 (2000)..... 7

Extracting audio from visual information: Algorithm recovers speech from the vibrations of a potato-chip bag filmed through soundproof glass, MIT NEWS, Aug. 4, 2014..... 7

H. Lee Van Bowen, *Electronic Surveillance in California: A Study in State Legislative Control*, 57 CAL. L. REV. 1182, 1232 (1969) 14

Jennifer Schuessler, *A Brief History of Shorthand*, THE NEW YORK TIMES, Aug. 6 2009, <http://artsbeat.blogs.nytimes.com/> 10

MERRIAM-WEBSTER ONLINE DICTIONARY, <http://www.merriam-webster.com/dictionary/shorthand> 10

Scott Cacciola and Billy Witz, *N.B.A. Investigating Racial Remarks Tied to Clippers Owner*, NEW YORK TIMES, April 26, 2014..... 14

Sharon Waxman, *I'd Like to Get Off the Stage Right Now*, NEW YORK TIMES, April 26, 2007 14

Stenograph L.L.C., *A History of the Shorthand Writing Machine*, <http://www.stenograph.com/upfiles/history.pdf> 10

WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY (2002)..... 3, 5

I. IDENTITY AND INTEREST OF *AMICUS CURIAE*

WCRA is a non-profit organization that represents the interests of Washington-based court reporters, Communication Access Realtime Translators (CART), and captioners. Its membership consists of hundreds of court reporters, CART providers and captioners throughout the State of Washington. Members of WCRA are similarly situated to reporters from Seattle Deposition Reporters, LLC (“SDR”), a defendant in the trial court and one of the Petitioners here. WCRA represents its members in the state legislature on issues affecting court reporting, CART, and captioning.

II. ISSUE ADDRESSED BY *AMICUS*

Whether the real-time transcription of a conversation by a court reporter who is a participant in the conversation constitutes a “recording” in violation of Washington’s Privacy Act, RCW 9.73.030(1).

III. STATEMENT OF THE CASE

WCRA defers to the parties’ statement of the case, but highlights the following, as recounted by the Court of Appeals: in the two calls between Dillon, on the one hand, and Davis Wright Tremaine LLP (“DWT”) lawyers and the court reporters on the other, the DWT lawyers and the court reporter were in the same room and listened to the conversation via the same device (*i.e.*, the speakerphone). In both instances, the court reporters had stenographic equipment that they used to

transcribe the conversation with Dillon, and the Court of Appeals assumed that the reporters' failure to secure advance consent to this transcription violated the Privacy Act. No device was used to intercept or gain access to the conversations. In both instances, the court reporter used human effort to capture a conversation that the reporter was admittedly a party to.

As further set forth below, this sort of note-taking is not a "recording" under Washington's Privacy Act. Such a construction would be contrary to case law from other jurisdictions interpreting privacy statutes, and contrary to Washington's statutory scheme. It is also contrary to common sense and experience. Moreover, it fails to recognize the distinct privacy interest someone has in his or her voice recording, and would create legal hurdles and the risk of criminal liability for the broad range of essential real-time reporting functions of court reporters, captioners, translators, and others. Finally, interpreting "recording" to include note-taking and real-time transcription also raises First Amendment concerns. These concerns should be avoided altogether by interpreting "record" to encompass only capturing a voice recording.

III. ARGUMENT

A. "Record" As Used in the State's Privacy Act Does not Include Taking Notes

While it did not confront the issue directly, the Court of Appeals' decision assumed that the DWT lawyers and SDR "recorded" their

conversations with Dillon by transcribing the conversations that they were a party to. Op. at 3-4. This is incorrect. A person can violate the statute in one of two ways: (1) by “intercepting” a communication or conversation; and (2) by “recording” a communication or conversation. One involves gaining access to a conversation that you are not a party to. The other involves capturing a recording of a conversation without consent of all of the parties. Both violations require use of a “device electronic or otherwise designed to record and/or transmit” a particular communication or conversation. RCW 9.73.030(1)(a) and (b).

1. Neither SDR nor the DWT lawyers “intercepted” the conversations.

The statute does not define the term “intercept.” However, this Court recently held, looking to the dictionary definition of the term, that “intercept” means to “stop . . . before arrival . . . or interrupt the progress or course.” *State v. Roden*, 179 Wn.2d 893, 904, 321 P.3d 1183 (2014) (citing WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 1176 (2002)). In this case, because the court reporters and lawyers were both participating in the conversations using the same equipment (*i.e.*, the speakerphone), it is clear that no interception occurred. Their participation via speakerphone is similar to the situation in *State v. Corliss*, where a police officer listened to a conversation between an informant and a

suspect via a telephone receiver “tipped” in the officer’s direction by the informant. 67 Wn. App. 708, 709-10, 838 P.2d 1149 (1992). As the court concluded in *Corliss*, “tilting the telephone receiver so the officer could hear the conversation is not conduct prohibited by the Act . . . [b]ecause there was no device used to record or transmit the conversation.” The Court later distinguished *Corliss* in *State v. Christensen*, where it held that a mother who listened to a telephone conversation between her daughter and her daughter’s boyfriend via the “base unit” of a cordless phone violated the statute. 153 Wn.2d 186, 197-98, 102 P.3d 789 (2004). Central to the Court’s conclusion in *Christensen* was that the mother “heard [the] conversation from an intermediate location between [the boyfriend’s] telephone extension and [the daughter’s] mobile headset” *Id.* at 196. In distinguishing *Corliss*, the Court noted that the officer in that case “merely heard a conversation *in the same manner as the police informant who was a party to the conversation,*” and therefore that case “did not involve an interception.” *Id.* (emphasis added). There is no dispute here that the court reporters and lawyers heard the conversations in the same manner (both via the same speakerphone), in the same room (not an “intermediate” location) and at the same time. As in *Corliss*, in this case, the communication was not “stopped before arrival,” nor did any party “interrupt the progress or course” of the communication. Accordingly,

there was no “interception.”

The viability of Dillon’s Privacy Act claim therefore depends on the conclusion that by taking notes, the court reporters and lawyers “recorded” the conversation. This conclusion is untenable.

2. Participants who take notes do not “record” a conversation.

The statute also does not define the term “record.” There are two plausible dictionary definitions for the term:

- (1) “to set down in writing”; and
- (2) “to cause (sound, visual images) to be transferred to and registered on something by . . . electronic means in such a way that the thing so transferred and registered can be . . . subsequently reproduced.”

WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 1898 (2002) (attached as **Appendix A** to this brief). Of these definitions, only the latter is a workable one. Neither Dillon nor the Court of Appeals cited any authority for the proposition that the term “record” includes writing down what is said during a conversation, or note-taking, and indeed, no reported Washington case has addressed this issue. The reported cases outside the state that have addressed the issue did so in the context of constitutional challenges, and both cases concluded that the privacy statutes in question did *not* bar taking notes or transcribing in real-time. In *People v. Wyrick*, the California Court of Appeals distinguished between a recording, which can be played back and was prohibited, and summarizing, remembering,

or taking notes of a conversation, which was not prohibited. *See People v. Wyrick*, 77 Cal.App.3d 903, 907, 144 Cal. Rptr. 38 (1978). Perhaps because the conclusion was an obvious one, the court did not treat it as a difficult issue, noting merely that “[t]he statute makes it a crime to secretly record, *not to remember, take notes, or later stenographically summarize that recollection.*” *Id.* at 907 (emphasis added). In *State v. Nobel*, the Oregon Court of Appeals similarly held, without hesitation, that Oregon’s privacy statute does not “prohibit transcription, whether by pen, pencil, or otherwise.” *State v. Nobel*, 97 Ore. App. 559, 564, 777 P.2d 985 (1989); *see also Vera v. O’Keefe*, 791 F. Supp. 2d 959, 967 (S.D. Cal. 2011) (noting that a violation of California’s privacy statute occurs when someone effects an “*audio or video recording of an event or interaction*” which is expected to remain confidential) (emphasis added).

This is the only logical conclusion, given that construing the term “record” to encompass taking notes or contemporaneous transcription would lead to absurd results, and as set forth in Section C below, would also raise First Amendment concerns. Participants in a telephone conversation across a variety of professional contexts, including, for example, lawyers, journalists, and counselors, routinely take notes with or without the knowledge or consent of other participants. Dillon does not seriously argue that the DWT lawyers would violate the statute if they

took notes or typed along to the conversation, but this is the logical conclusion to Dillon’s argument. To the extent a court reporter violates the statute, someone else who participates and does their own transcribing also violates the statute. Some people may have particularly sharp memories and be able to recall conversations verbatim. Others may be able to type or take shorthand while on the phone. Under the Court of Appeals’ interpretation of the statute, these individuals would be violating the statute unless they secured the advance consent of all parties to the conversation.¹ This is contrary to common sense and practical everyday experience. *cf.* Diane Zimmerman, *I Spy: The Newsgatherer Under Cover*, 33 U RICH. L. REV. 1185, 1208 (2000) (“[i]f one thinks of recording as a form of note-taking, it is not at all obvious why one form is increasingly treated as a tort, *while the other is widely accepted as appropriate—indeed, possibly protected by the First Amendment*”) (emphasis added).

The conclusion that one does not “record” by writing down what is

¹ A key fact here is that the court reporters did not use any devices to gain access to the conversation. To the extent someone used a powerful microphone or other device to listen in on a conversation and then transcribed it, they would arguably violate the (interception prong of the) statute by gaining access to the conversation. It is also worth noting that this is not a situation where newly developed technology allows someone to gain access and record a conversation in a way that was previously not possible and not envisioned by the drafters of the statute. *See, e.g., Extracting audio from visual information: Algorithm recovers speech from the vibrations of a potato-chip bag filmed through soundproof glass*, MIT NEWS, Aug. 4, 2014. Stenography has been around since long before the Privacy Act was drafted, and to the extent they wanted to cover this activity in the statute, the drafters could have easily specified that it was off limits. Admittedly, technology will constantly evolve, and efforts should be made for the law to keep pace and protect the privacy of citizens.

said or by taking notes is also in line with Washington’s overall statutory scheme, which in 1977 was revised to delete the word “divulge.” *Kearney v. Kearney*, 95 Wn. App. 405, 412-13, 974 P.2d 872 (1999). *Kearney* is closely analogous, as it involved an attempt to hold third parties liable for filing a transcript of an otherwise recorded conversation. The plaintiff settled with the party who tape recorded the conversation (his former spouse) and tried to assert a claim against defendants, including a Guardian Ad Litem, psychological evaluator and lawyer, for filing a transcript of the conversation in court. The Court of Appeals (Division 2) rejected this attempt, concluding that the statute only imposes liability for “recording” or “interception.” Although a section of the statute (RCW 9.73.050) barred the admission of evidence obtained in violation of the act, the court noted that this section “does not create civil liability for filing information obtained in violation of the privacy act.” *Kearney*, 95 Wn. App. at 413 (“The 1977 amendment deleted the word ‘divulge,’ thereby eliminating as an illegal action the disclosure or dissemination of illegally recorded telephone conversations.”). Whatever the propriety of the use of a transcript as an evidentiary matter, this highlights the broader principle that the Privacy Act treats the substance of a conversation differently from an actual recording of it.²

² *State v. Townsend* is distinguishable. There the Court held that ICQ messages between

B. There are Privacy-Driven and Practical Reasons for Distinguishing Between “Recording” and Note-Taking

1. “Recording” should only encompass capturing the conversation in a way that allows for later aural disclosure.

Dillon may argue that the stenotype machine used by SDR and other court reporters is a “device electronic or otherwise designed to record and/or transmit” a communication. While this argument may have superficial appeal, the Court should reject it. It likely stems from a misunderstanding or failure to appreciate the function of a stenotype machine. A machine used for stenography is no more a machine designed to record a communication than is a typewriter, or a pen and notepad. Indeed, stenography and shorthand are, in effect, highly efficient ways of taking notes, but that depend entirely on the efforts of the stenographer. *Boyce v. Timmerman-Cooper*, Case No. 3:12-cv-285, 2013 U.S. Dist. LEXIS 10284, *14 (S.D. Ohio Jan. 25, 2013) (noting that court reporters use “machine stenography, a method by which a court reporter records proceedings in shorthand but on a machine”); RCW 18.145.020 (defining “court reporting” to encompass “the making by means of written symbols or abbreviations in shorthand or machine writing . . . of a verbatim record

the defendant and a detective posing as an underage girl were “recorded” by the detective’s computer, and found that the statute was violated absent consent (which the Court implied). Significantly, that case involved text-based communications, which did not raise the different privacy interests implicated by voice recordings. *State v. Townsend*, 147 Wn.2d 666, 670-71, 57 P.3d 255 (2002). In that case, unlike here, the communication and recording were one and the same.

of any” specified proceeding). Shorthand is defined as “a [s]ystem for rapid writing that uses symbols or abbreviations for letters, words, or phrases.” MERRIAM-WEBSTER ONLINE DICTIONARY, <http://www.merriam-webster.com/dictionary/shorthand> (last visited August 22, 2014). As initially developed, shorthand was taken by hand (*i.e.*, using handwritten notes) but over time, machines became more commonplace. Jennifer Schuessler, *A Brief History of Shorthand*, THE NEW YORK TIMES, Aug. 6 2009, <http://artsbeat.blogs.nytimes.com/2009/08/06/a-brief-history-of-shorthand/> (last visited August 23, 2014). To operate a stenotype machine, the operator presses buttons (keys) to produce output. *See* Stenograph L.L.C., *A History of the Shorthand Writing Machine*, <http://www.stenograph.com/upfiles/history.pdf> (last visited August 23, 2014). In the place of standard letters, stenotype machines have stenographic characters. *Id.* In essence, a stenotype machine is nothing more than a typewriter, albeit in a language other than English. (An example of stenographic output is attached as **Appendix B** to this brief.) While stenotype machines today come with many features, stenotype functionality cannot be used to “play back” anything—stenographic notes are taken based on the operator translating what they hear into stenographic code. The operator can “read back” (rather than play back) what the operator heard and entered stenographically in their notes.

And this is a crucial distinguishing factor that separates “recording” a conversation so it can be played back, from summarizing, taking notes about, transcribing, or recalling it. The latter actions are filtered through human input and depend on the efforts and discretion of a human. While note-taking and shorthand are not viewed as error-free, a tape recording will be taken as gospel.³ It is extremely difficult to deny any facts as presented in a tape recording, but notes and summaries may be contested. In *Knobel*, the court noted there was no interception, because the listener “first hears [the conversation] by means of his auditory senses,” and for this reason “transcription is not prohibited.” *Knobel*, 97 Ore. App. at 563. This is precisely the case here. Dillon’s Privacy Act claim rests on the implicit assumption that a transcription is qualitatively different because it is verbatim or near-exact, but there is no principled distinction between a court reporter and an extremely talented note-taker or someone with a particularly sharp memory. On the other hand, in the privacy context, courts *have* treated voice recordings as distinct from the content of a conversation. In other words, there is a privacy justification for prohibiting a non-consensual recording that can be played back as opposed to any other kind of memorialization of a conversation.

³ In reality, court reporting is often more accurate than a recording because the court reporter can verify words that are inaudible or unclear. Nevertheless, those unfamiliar with the process may view a voice recording as more accurate.

2. Voice recordings implicate different privacy interests than transcripts or summaries.

Treating a voice recording different from recall, summary, or notes of a conversation rests on the implicit notion that a voice recording deserves special privacy protections—*i.e.*, while someone may participate in a conversation, this does not automatically give them the right to record the conversation. They can write down what was said, summarize it or disclose it (subject to any specially applicable rules or contractual promises). But actually making an audio recording of the conversation is different. Cases across a variety of contexts recognize that a voice recording implicates distinct, and perhaps, greater, privacy interests from the actual content of what is said. As articulated by the Rhode Island Supreme Court in the context of construing its privacy statute:

[a]lthough we may expect individuals with whom we are communicating to hear and even remember what we are saying (and perhaps how we have said it), *we usually do not expect them to acquire surreptitiously an exact audio reproduction of the conversation that they can later replay at will for themselves or for others.*

State v. O'Brien, 774 A.2d 89, 96 (R.I. 2001) (emphasis added). The California Supreme Court similarly noted that “a person may reasonably expect privacy against the electronic recording of a communication, even though he or she had no reasonable expectation as to confidentiality of the communication’s contents.” *Sanders v. American Broadcasting*

Companies, 20 Cal. 4th 907, 915, 978 P.2d 67, 85 Cal. Rptr. 2d 909 (1999); *see also Ribas v. Clark*, 38 Cal. 3d 355, 360-61, 696 P.2d 637, 212 Cal. Rptr. 143 (1985) (“secret monitoring denies the speaker an important aspect of privacy of communication—the right to control the nature and extent of the firsthand dissemination”); *Dietemann v. Time, Inc.*, 449 F.2d 245, 249 (9th Cir. 1971) (“One who invites another to his home or office takes a risk that the visitor . . . may repeat all he hears and observes . . . [b]ut he does not and should not be required to take the risk that what is heard and seen will be transmitted by photograph or recording . . .”). In a FOIA case, the United States Court of Appeals for the District of Columbia Circuit held that although transcripts of the crew of the Challenger Space Shuttle’s final conversation had been released to the media, the astronauts had a distinct privacy interest in the actual recording. As Circuit Judge Ginsburg noted:

[r]eading the libretto of a Verdi opera is not the same as hearing the opera performed. So, too, the meaning of Marc Antony’s speech over the body of Caesar is not to be found in the disembodied words on the printed page, but in the voice that contradicts them.

The New York Times Co. v. NASA, 920 F.2d 1002, 1006, 287 U.S. App. D.C. (D.C. Cir. 1990).

One rationale for treating a voice recording differently was articulated in an early law review article examining California’s privacy

statute:

Even though [a participant] may republish his words, it will be done secondhand . . . *When electronic monitoring is involved, however, the speaker is deprived of the right to control the extent of his own firsthand dissemination.* . . . In this regard participant monitoring closely resembles third-party surveillance; both practices deny the speaker a most important aspect of privacy of communication—the right to control the extent of first instance dissemination of his statements.

H. Lee Van Bowen, *Electronic Surveillance in California: A Study in State Legislative Control*, 57 CAL. L. REV. 1182, 1232 (1969) (emphasis added). In the modern era, more than one public figure has had a recording of their conversation or their voicemail leaked to the press, and the often-intense attention following such a leak is a confirmation of the difference between a voice recording and notes or later recollection. *See, e.g.*, Sharon Waxman, *I'd Like to Get Off the Stage Right Now*, NEW YORK TIMES, April 26, 2007 (discussing the leak of Alec Baldwin's voicemail, noting "Mr. Baldwin's phone message berating his daughter Ireland, whence it bounced all over the media biosphere, may just set a new benchmark for material that can be expected to come careening into the public domain"); Scott Cacciola and Billy Witz, *N.B.A. Investigating Racial Remarks Tied to Clippers Owner*, NEW YORK TIMES, April 26, 2014 (noting the fallout following the leak of audiotaped comments made by then-Los Angeles Clippers Owner Donald Sterling). As many celebrities and public figures

can attest to, “understandably, many people do not want their voices broadcast to others or on the Internet to be heard around the world.” *People v. Clark*, N.E.3d 154, 162, 379 Ill. Dec. 77, 2014 IL 115776 (Ill. 2014).

3. Court reporters and others regularly engage in note-taking without securing the express consent of those involved.

In addition to suing the DWT lawyers, Dillon sued SDR. The unstated premise of his claim against SDR is that stenographers have an independent obligation to obtain consent from all parties when they take notes of a conversation or presentation. And, if they fail to do so, according to Dillon, the stenographer is subject to criminal liability. Obtaining express consent would be a practical impossibility in many instances, such as when taking notes of a shareholders’ meeting or an investor call involving hundreds of participants. Even if the stenographer was present so that everyone could see her taking notes, that would be no defense. While the statute contains an exception for news reporting (which, as further discussed below is inadequate), it does not contain a comparable exception for court reporters.

Court reporting as defined by Washington law encompasses use of shorthand or a stenotype machine to make a record of any “oral court proceeding, deposition, or proceeding before a jury, referee, court commissioner, special master, governmental entity, or administrative

agency. . . .” RCW 18.145.020. Court reporters regularly in the course of their activities, as the SDR reporters did in this case, engage in a wide range of note-taking that is outside of statutorily defined “court reporting.” This includes, for example, taking notes or transcribing meetings, both over the telephone and in person, such as meetings of shareholders, nonprofits, private clubs, or homeowners’ associations. Members of WCRA also provide real time transcription services for live events and in classrooms in order to assist hearing impaired individuals. “Notetakers and computer-aided transcription services” are among the “auxiliary aids and services” that the Americans with Disabilities Act require certain employers and governments to provide. 28 CFR §§ 35.104 and 36.303(b)(1). Translators, who may be court reporters, also provide real-time transcription in order to assist in the understanding of a conversation or communication. In these instances, equating “recording” with transcribing would require these court reporters to seek the express consent of all parties involved, or risk violating the statute and incurring criminal penalties. This prohibition applies equally to individuals such as bloggers or citizen reporters, who may report on meetings or events that fall in the grey area between private and public. The ambiguities in the statute as to what constitutes a “recording” and when consent must be secured counsel in favor of application of the rule of lenity. *City of Seattle*

v. Winebrenner, 167 Wn.2d 451, 462, 219 P.3d 686 (2009) (court should construe an ambiguous criminal statute favorably to the accused). Moreover, courts should be “especially cautious in the interpretation of vague statutes when First Amendment interests are implicated.” *City of Bellevue v. Lorang*, 140 Wn.2d 19, 31, 992 P.2d 496 (2000).

It is tempting to look at the news reporting exception as adequately addressing any concerns of this sort, but this exemption is incomplete at best, and only applies to certain types of officially sanctioned news organizations. *See* RCW 9.73.030 (4) (setting forth deemed consent for any employee of a “regularly published newspaper, magazine, wire service, radio station, or television station . . . [when] acting in the course of bona fide news gathering duties”). Consent is only deemed given if “the recording or transmitting device is readily apparent or obvious to the speakers” and thus the exemption would not apply to phone conversations where reporters may take notes. Given the proliferation of citizen journalism, there can be little dispute that the deemed consent provision inadequately safeguards relevant First Amendment interests. *See, e.g., Alvarez; Clark, infra*. As relevant here, however, the exemption does not apply to court reporters or people who provide transcription services, when acting in their various capacities as note-takers or transcribers.

C. First Amendment Concerns Counsel in Favor of a Narrow Interpretation of the Term “Record”

Courts have implicitly recognized that note-taking is activity protected by the First Amendment. *See Estes v. Texas*, 381 U.S. 532, 539-40, 85 S. Ct. 1628, 12 L. Ed. 2d 543 (1965) (assuming that taking notes is ordinarily a part of what is protected under the First Amendment); *see also CBS, Inc. v. Lieberman*, 439 F. Supp. 862, 866 (N.D. Ill. 1976) (finding no authority suggesting that press is not protected by First Amendment in taking notes); *Sigma Delta Chi v. Speaker, Maryland House of Delegates*, 270 Md. 1, 8, 310 A.2d 156 (Md. 1973) (ban on note-taking unconstitutional because it would “frustrate *all* effective communication”). In one case, the Sixth Circuit implied that note-taking by reporters was protected, concluding that a series of restrictions on the press in covering a criminal trial were acceptable in part because note-taking was not prohibited. *See United States v. Beckham*, 789 F.2d 401, 410 (6th Cir. 1986). Most recently, in the course of issuing an injunction against enforcement of Illinois’ privacy statute when used to record police officers, the Seventh Circuit noted that “banning photography or note-taking at a public event would raise serious First Amendment concerns.” *ACLU v. Alvarez*, 679 F.3d 583, 595-96 (7th Cir. 2012). Illinois’ privacy statute was later invalidated by in *People v. Clark*, 6 N.E.3d at 161.

In finding the Illinois statute overbroad because it banned

recordings of conversations regardless of whether there was any expectation of confidentiality, the Illinois Supreme Court had no trouble concluding that it is *not* a violation of the statute for someone to “write down what we say and publish it.” *People v. Clark*, 6 N.E.3d at 161. In *Clark* and in *People v. Melongo*, a companion case to *Clark*, the Illinois Supreme Court concluded that the state’s eavesdropping statute was overly broad because it prohibited recording in many situations where there was no legitimate state interest in protecting “conversational privacy.” *People v. Melongo*, 6 N.E.3d 120, 126, 379 Ill. Dec. 43, 2014 IL 114852 (Ill. 2014). Numerous cases, and the structure of Washington’s Privacy Act, recognize that participants have a diminished privacy interest, if at all, in the content of their conversations with known participants. Thus, interpreting the Privacy Act to encompass note-taking for all conversations, including the majority of those where there is no separately stated promise of privacy, would create similar overbreadth concerns. This approach would prohibit substantially more speech (*i.e.*, note-taking) than is necessary to serve any legitimate state interest in protecting privacy in the content of conversations.

Two cases addressing constitutional challenges to privacy statutes concluded that the statutes passed constitutional scrutiny precisely because they could be (and were) interpreted to not prohibit note taking or

transcription. *See Knobel*, 97 Ore. App. at 563-64 (rejecting constitutional challenge and concluding that the statute “does not prohibit taking or transcribing notes of a conversation”); *People v. Wyrick*, 77 Cal. App. 3d at 907 (concluding similarly that the statute “makes it a crime to secretly record, *not to remember, take notes or later stenographically summarize that recollection*”) (emphasis added). The Court should take a similar approach here, and interpret the Washington statute in a way that avoids these First Amendment problems.

IV. CONCLUSION

The Court of Appeals assumed the term “record” in Washington’s Privacy Act encompassed taking notes, shorthand, and stenography. For the reasons set forth above, WCRA respectfully suggests that the Court should reject this interpretation, and instead should conclude that “record” only includes the common sense meaning of “caus[ing sound] . . . to be transferred to and registered on something by . . . electronic means in such a way that [it] can be subsequently reproduced” (*i.e.*, capturing an aural recording that can be played back). Because the Court of Appeals’ decision rests on the incorrect premise that the reporters violated the Privacy Act by transcribing their conversation with Dillon, this Court should reverse the decision of the Court of Appeals.

Respectfully submitted, this 29th day of August, 2014.

**WASHINGTON COURT
REPORTERS ASSOCIATION**

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APPENDIX A

Definition of “record” from WEBSTER’S THIRD NEW INTERNATIONAL
DICTIONARY, p. 1898 (2002).

Webster's
Third
New International
Dictionary
OF THE ENGLISH LANGUAGE
UNABRIDGED

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*Utilizing all the experience and resources of more than
one hundred years of Merriam-Webster® dictionaries*

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APPENDIX B

STENED, REALTIME THEORY (9th prtg. Stenotype Educ. Products, Inc. 2008).

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LESSON 1

GETTING READY

WHAT IS MACHINE SHORTHAND?

Machine shorthand, sometimes referred to as stenotypy, is a system of phonetic writing which uses a compact keyboard consisting of 23 keys: 21 letters, an asterisk, and a number bar.

The stenotype machine differs from a typewriter in that a single key or any number of keys in any combination can be depressed at the same time. Thus, a syllable or word is written with one key stroke rather than using a separate key stroke for each letter. This is one of the reasons words can be written on the stenotype machine so much faster than they can be typed on the QWERTY—the standard typewriter/computer—keyboard.

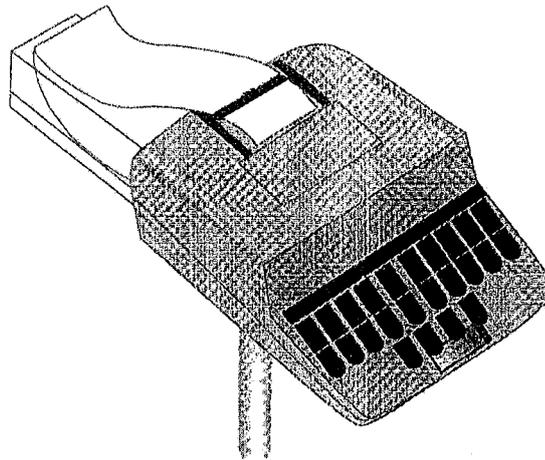
As an example, all letters in the word “cat” are written at one time on the stenotype machine as KAT. On the typewriter, the same word would be written in three key strokes as C-A-T. You will notice that the word “cat” is spelled phonetically in stenotype (i.e., K is used rather than C). Most words are written phonetically on the stenotype keyboard.

STROKES

Any single key or key combination depressed on the stenotype machine at one time is referred to as a **STROKE**. Each stroke makes an inked imprint on a paper tape and/or is stored in the computer or computer input device. KAT, the stenotypic representation for the word “cat” explained previously, is a stroke because all letters are depressed at the same time. As strokes are written, automatic spacing occurs between them, allowing for faster writing.

OUTLINES

The letter combinations used to define a word are referred to as **OUTLINES**. The more definitive an outline is—that is, the better it distinctively outlines the word—the easier it will be to read back or transcribe the notes by a human or by a computer. The stenotype student should learn the first day of class that the time to clearly outline the word is when writing it, rather than to depend upon memory or context to help later in figuring out what was said. Shorthand outlines are also referred to as **notes**.



Sample Steno Machine

SENTENCE EXERCISE 21-2—NOTES

(Audio & Tutorial Exercise T21-2)

Following are the notes for Sentence Exercise 21-2. Generally, though not always, the optional briefs and phrases are used in these notes.

| | | |
|--|--|--|
| <p>1</p> <p style="text-align: right;">F P L T</p> <p>W E</p> <p>HR B</p> <p>PH A E D</p> <p>T O</p> <p>P A EU</p> <p>A PB</p> <p>KP AO EU Z</p> <p>T A B G S</p> <p>T H</p> <p>K W RAO E R</p> <p style="text-align: right;">F P L T</p> <p>2</p> <p style="text-align: right;">F P L T</p> <p>T H A</p> <p>S K W R U PBLG</p> <p>T O E L D</p> <p>U S</p> <p>T H A</p> <p>H E</p> <p>HR</p> <p>KP O PB</p> <p>RA EU T</p> <p>T</p> <p>PH A PB</p> <p style="text-align: right;">F P L T</p> <p>3</p> <p style="text-align: right;">F P L T</p> <p>T F S</p> <p>S AO PB</p> <p>A F</p> <p>T H A</p> <p>T H A EU</p> <p>K A EU P L</p> <p>T O</p> <p>KP AO U P L</p> <p>H E R</p> <p style="text-align: right;">F P L T</p> <p>4</p> <p style="text-align: right;">F P L T</p> <p>T</p> <p>KP EU B T</p> <p>W E</p> <p>TK EU D</p> <p>PW FR</p> <p>W U Z</p> | <p>S K W R * U S</p> <p>A Z</p> <p>TKPW AO D</p> <p style="text-align: center;">5</p> <p style="text-align: right;">F P L T</p> <p style="text-align: center;">F P L T</p> <p>T</p> <p>KP A P L</p> <p>W E</p> <p>S K W R * U S</p> <p>T AO B G</p> <p>W U Z</p> <p>H A R D</p> <p style="text-align: right;">F P L T</p> <p style="text-align: center;">6</p> <p style="text-align: right;">F P L T</p> <p>K W R O U</p> <p>PH A EU PB T</p> <p>KP AO E D</p> <p>T</p> <p>T AO EU P L</p> <p>HR EU P L T</p> <p>T P R</p> <p>T H</p> <p>KP A P L</p> <p style="text-align: right;">F P L T</p> <p style="text-align: center;">7</p> <p style="text-align: right;">F P L T</p> <p>A F</p> <p>K W R O U</p> <p>T A EU B G</p> <p>T P H T</p> <p>A EUR</p> <p style="text-align: right;">R B G S</p> <p>K W R O U</p> <p>PH A EU</p> <p>KP A EU L</p> <p>EU T</p> <p style="text-align: right;">F P L T</p> <p style="text-align: center;">8</p> <p style="text-align: right;">F P L T</p> <p>EU T</p> <p>HR</p> <p>K RA B G</p> <p>T P</p> <p>K W R O U</p> <p>KP E R T</p> | <p>T AO F P</p> <p>P R E R B</p> <p>S H UR</p> <p style="text-align: right;">F P L T</p> <p style="text-align: right;">9</p> <p style="text-align: right;">F P L T</p> <p>S H E</p> <p>S A EU D</p> <p>T H A</p> <p>T F S</p> <p>KP O R B</p> <p>T A PB T</p> <p style="text-align: right;">F P L T</p> <p>1 0</p> <p style="text-align: right;">F P L T</p> <p>KP E P T</p> <p>T P R</p> <p>T H</p> <p>W U PB</p> <p>TK E</p> <p>T A EU L</p> <p style="text-align: right;">R B G S</p> <p>A U L</p> <p>S</p> <p>S K W R * U S</p> <p>T P AO EU PB</p> <p style="text-align: right;">F P L T</p> <p>1</p> <p>1</p> <p style="text-align: right;">F P L T</p> <p>TK O</p> <p>T P H O T</p> <p>S H A EU B G</p> <p>T H A</p> <p>K</p> <p>O R</p> <p>EU T</p> <p>HR</p> <p>E B G S</p> <p>P H R O E D</p> <p style="text-align: right;">F P L T</p> <p>12</p> <p style="text-align: right;">F P L T</p> <p>P H RAO E Z</p> <p>T P AO E L</p> <p>T P RAO E</p> <p>T O</p> |
|--|--|--|

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