Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

BARTNICKI ET AL. *v.* VOPPER, AKA WILLIAMS, ET AL.

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

No. 99–1687. Argued December 5, 2000– Decided May 21, 2001*

During contentious collective-bargaining negotiations between a union representing teachers at a Pennsylvania high school and the local school board, an unidentified person intercepted and recorded a cell phone conversation between the chief union negotiator and the union president (hereinafter petitioners). After the parties accepted a nonbinding arbitration proposal generally favorable to the teachers, respondent Vopper, a radio commentator, played a tape of the intercepted conversation on his public affairs talk show in connection with news reports about the settlement. Petitioners filed this damages suit under both federal and state wiretapping laws, alleging, among other things, that their conversation had been surreptitiously intercepted by an unknown person; that respondent Yocum, the head of a local organization opposed to the union's demands, had obtained the tape and intentionally disclosed it to, *inter alios,* media representatives; and that they had repeatedly published the conversation even though they knew or had reason to know that it had been illegally intercepted. In ruling on cross-motions for summary judgment, the District Court concluded that, under the statutory language, an individual violates the federal Act by intentionally disclosing the contents of an electronic communication when he or she knows or has reason to know that the information was obtained through an illegal interception, even if the individual was not involved in that interception; found that the question whether the interception was intentional raised a genuine issue of material fact; and rejected respondents' de-

– – – – – –

*Together with No. 99–1728, *United States* v. *Vopper, aka Williams, et al.,* also on certiorari to the same court.

Syllabus

fense that they were protected by the First Amendment even if the disclosures violated the statutes, finding that the statutes were content-neutral laws of general applicability containing no indicia of prior restraint or the chilling of free speech. The Third Circuit accepted an interlocutory appeal, and the United States, also a petitioner, intervened to defend the federal Act's constitutionality. Applying intermediate scrutiny, the court found the statutes invalid because they deterred significantly more speech than necessary to protect the private interests at stake, and remanded the case with instructions to enter summary judgment for respondents.

Held: The First Amendment protects the disclosures made by respondents in this suit. Pp. 6–20.

(a) Title III of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, generally prohibits the interception of wire, electronic, and oral communications. Title 18 U. S. C. §2511(1)(a) applies to the person who willfully intercepts such communications and subsection (c) to any person who, knowing or having reason to know that the communication was obtained through an illegal interception, willfully discloses its contents. Pp. 6–9.

(b) Because of this suit's procedural posture, the Court accepts that the interception was unlawful and that respondents had reason to know that. Accordingly, the disclosures violated the statutes. In answering the remaining question whether the statutes' application in such circumstances violates the First Amendment, the Court accepts respondents' submissions that they played no part in the illegal interception, that their access to the information was obtained lawfully, and that the conversations dealt with a matter of public concern. Pp. 9–10.

(c) Section 2511(1)(c) is a content-neutral law of general applicability. The statute's purpose is to protect the privacy of wire, electronic, and oral communications, and it singles out such communications by virtue of the fact that they were illegally intercepted– by virtue of the source rather than the subject matter. Cf. *Ward* v. *Rock Against Racism,* 491 U. S. 781, 791. On the other hand, the prohibition against disclosures is fairly characterized as a regulation of speech. Pp. 10–12.

(d) In *New York Times Co.* v. *United States,* 403 U. S. 713, this Court upheld the press' right to publish information of great public concern obtained from documents stolen by a third party. In so doing, this Court focused on the stolen documents' character and the consequences of public disclosure, not on the fact that the documents were stolen. *Ibid.* It also left open the question whether, in cases where information has been acquired unlawfully by a newspaper or by a source, government may punish not only the unlawful acquisi-

Syllabus

tion, but also the ensuing publication. *Florida Star* v. *B. J. F.,* 491 U. S. 524, 535, n. 8. The issue here is a narrower version of that question: Where the publisher has lawfully obtained information from a source who obtained it unlawfully, may the government punish the ensuing publication based on the defect in a chain? The Court's refusal to construe the issue more broadly is consistent with its repeated refusal to answer categorically whether the publication of truthful information may ever be punished consistent with the First Amendment. Accordingly, the Court considers whether, given the facts here, the interests served by §2511(1)(c) justify its restrictions on speech. Pp. 12–14.

(e) The first interest identified by the Government– removing an incentive for parties to intercept private conversations– does not justify applying §2511(1)(c) to an otherwise innocent disclosure of public information. The normal method of deterring unlawful conduct is to punish the person engaging in it. It would be 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. In virtually all §2511(1)(a), (c), or (d) violations, the interceptor's identity has been known. There is no evidence that Congress thought that the prohibition against disclosures would deter illegal interceptions, and no evidence to support the assumption that the prohibition reduces the number of such interceptions. Pp. 14–16.

(f) The Government's second interest– minimizing the harm to persons whose conversations have been illegally intercepted– is considerably stronger. Privacy of communication is an important interest. However, in this suit, privacy concerns give way when balanced against the interest in publishing matters of public importance. One of the costs associated with participation in public affairs is an attendant loss of privacy. The profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide open supported this Court's holding in *New York Times Co.* v. *Sullivan,* 376 U. S. 254, 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. 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. Pp. 16–20.

200 F. 3d 109, affirmed.

STEVENS, J., delivered the opinion of the Court, in which O'CONNOR, KENNEDY, SOUTER, GINSBURG, and BREYER, JJ., joined. BREYER, J., filed a concurring opinion, in which O'CONNOR, J., joined. REHNQUIST, C. J., filed a dissenting opinion, in which SCALIA and THOMAS, JJ., joined.