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# What qualifies as a private conversation?

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## Justices delve into state's controversial eavesdropping law

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BY MARC KARLINSKY  
*Law Bulletin staff writer*

In the age when a commonplace hallway conversation can become a YouTube sensation with a few taps on an iPhone, the Illinois Supreme Court heard arguments today on the constitutionality of the state's eavesdropping law.

Prosecutors are fighting in two separate criminal cases to reverse trial court declarations that the law, which bans audio recording of conversations unless all recorded parties consent, violated the due process and First Amendment rights of two defendants.

In their Bilandic Building courtroom while the Springfield court is under renovation, the justices

questioned what type of conversations should be considered private or not — and whether the statute even required an expectation of privacy.

The first case addressed whether Annabel Melongo had the right to record, then publish, a phone call she received from a Cook County court reporter.

Alan J. Spellberg, a Cook County assistant state's attorney, argued that the law presumes all conversations are private unless the consent of all people involved determines otherwise.

Several justices questioned if such a view expands to all public settings.

"I'm concerned with the overbreadth of the statute," Justice Robert R. Thomas said.

He asked whether filming a heated exchange between fans at a ballpark and posting it on YouTube would violate the law.

Spellberg responded that while that would fit the criteria in the

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# Arguments

law, nobody would reasonably recognize such a situation to be a private conversation. In situations in which there is an expectation of privacy, consent would be required.

"It'd be easy enough to say that in the statute," Thomas said.

Gabriel Bankier Plotkin, a partner at Miller, Shakman & Beem LLP who represents Melongo, said the state legislature, in its rightful attempt to protect private conversations, overstepped the Constitution by prohibiting the recording of all conversations.

"That's not the test," he said.

Consent is not always easy to get, Plotkin said. He cited an example of

a student filming a meeting from across a busy auditorium.

During the trial, Melongo cited an exemption to the law that allows someone to record a conversation when they believe the other person is in the process of committing a crime. Cook County Circuit Judge Steven J. Goebel dismissed six felony counts against her.

In the second case, which involved a man who recorded court proceedings and conversations with attorneys at the Kane County Courthouse, prosecutors argued that the law as written does not apply to innocent conduct.

"The General Assembly identified a particular harm it wanted to address," said Eric M. Levin, an assistant attorney general.

Levin argued that courtroom

proceedings have always been different, citing the high court's own rules about personal recordings and its pilot program for allowing cameras in circuit courts.

Justice Anne M. Burke asked whether the recording of a judge in the second case is the same as recording of a court reporter in the prior arguments.

"There have to be degrees of public officials," Levin said.

Levin conceded that the ease which people can record and publish is a valuable tool for transparency.

"We also can't close our eyes to the fact that there are serious harms with the use of this technology," he cautioned.

Levin argued that allowing for further recording of all conver-

sations would have a chilling effect on the types of personal exchanges lawyers and anyone else could have in public places.

In response, Donald J. Ramsell, owner of Ramsell & Associates LLC in Wheaton, said that the right to gather information — and gather it as accurately as possible — is a virtue in a free society.

Any conversation within earshot should have expectations that others may hear, Ramsell said.

Justice Mary Jane Theis followed up, asking him what could then fit the definition of a private conversation in public.

"A whisper," he said.

The cases are *People v. Annabel Melongo*, No. 114852, and *People v. Deforest Clark*, No. 15776.

[mkarlinsky@lbpc.com](mailto:mkarlinsky@lbpc.com)