

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION**

BRANDON FINCHUM, INDIVIDUAL
Plaintiff

V.

NACOGDOCHES COUNTY, et al.
Defendants.

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CIVIL ACTION NO: 9:21-cv-00285

PLAINTIFF'S SECOND AMENDED

ORIGINAL COMPLAINT

TO THE HONORABLE JUDGE OF THE COURT:

Plaintiff **Brandon K. Finchum** file this Second Amended Original Complaint against the County of Nacogdoches, Texas for damages and injunctive relief.

Plaintiff Brandon Finchum incorporates into this Second Amended Original Complaint, for all intents and purposes, his Motion for Leave to File Amended Complaint and Exhibits, for reference.

PARTIES

Plaintiff **Brandon K. Finchum** is currently a custodial inmate of the Nacogdoches County Sheriff's Office. Without any notice, on or around November 1st, 2021, Mr. Finchum was transferred from Nacogdoches County jail to the Jasper County, Texas jail where he remains today. Brandon K. Finchum is represented by the undersigned.

Defendant **John Fleming** is the Nacogdoches County Attorney. The Nacogdoches County Attorney's Office prosecutes misdemeanors and Mr. Fleming can be served with summons and process at 101 W. Main St., Suite 230, Nacogdoches, Texas 75961, or wherever he may be found. Nacogdoches County is represented by Robert Davis, Flowers Davis, 1021 ESE Loop 323, Suite 200, Tyler Texas 75701.

Defendant **Jason Bridges** is the Sheriff of Nacogdoches County, Texas and can be served with summons and process at his place of employment, the Nacogdoches County Sheriff's Office, 2306 Douglas Road, #102, Nacogdoches, Texas 75964, or wherever he may be found. Nacogdoches County is represented by Robert Davis, Flowers Davis, 1021 ESE Loop 323, Suite 200, Tyler Texas 75701.

Defendant **Andrew Jones** is the Nacogdoches County District Attorney. The Nacogdoches County District Attorney's Office prosecutes felonies. Mr. Jones may be served with summons and process at 101 West Main, Suite 240, Nacogdoches, Texas 75961, or wherever he may be found. Nacogdoches County is represented by Robert Davis, Flowers Davis, 1021 ESE Loop 323, Suite 200, Tyler Texas 75701.

Defendant **County of Nacogdoches, Texas** is a government entity existing under the laws of the State of Texas and is located within the U.S. Eastern District. The County of Nacogdoches, Texas can be served with summons and process on Greg Sowell, County Judge, located at 101 West Main Street, Nacogdoches, Texas 75961, or wherever he may be found. Nacogdoches County is represented by Robert Davis, Flowers Davis, 1021 ESE Loop 323, Suite 200, Tyler Texas 75701.

JURISDICTION AND VENUE

This Court has jurisdiction over Plaintiff's federal claims under 28 U.S.C. § 1331, 1343 and 42 U.S.C. §§ 1983 and 1988, and supplemental jurisdiction under 28 U.S.C. § 1367(a) to hear Plaintiff's state law claims.

Venue is proper in this Court, under 28 U.S.C. § 1391(b) because the incidents at issue took place in Nacogdoches County, Texas within the United States Eastern District of Texas, Lufkin Division.

STATEMENT OF THE CASE

The Supreme Court ruled in *Upjohn Co. v. United States* (1981) that "[t]he attorney-client privilege is the oldest of the privileges for confidential communications known to the common law. Its purpose is to encourage full and frank communication between attorneys and their clients, and thereby promote broader public interests in the observance of law and administration of justice. The privilege

recognizes that sound legal advice or advocacy serves public ends and that such advice or advocacy depends upon the lawyer being fully informed by the client.”

In early May of 2021, Brandon Finchum, a custodial inmate in the Nacogdoches County, Texas jail, called his attorney from a jail telephone several times to discuss his legal case. Brandon Finchum (an inmate) and his attorney, Paul Anderson, had an absolute attorney-client relationship at the time these calls were made. The calls were recorded, and confidential contents of those calls shared with others. That confidential information was then used to harm Plaintiff Brandon Finchum.

Subsequent to the filing of this lawsuit, it was discovered that telephone calls were not only recorded between Plaintiff Brandon Finchum and attorney Paul Anderson but telephone calls between Plaintiff Brandon Finchum and attorney Courtney Luther were also recorded and listened to by “non-lawyer employees” and “interns” within the Nacogdoches County Attorney’s Office.

On May 19th, 2021, Nacogdoches County, Texas Attorney John Fleming admitted that “a non-lawyer employee of our office listened to a jail call between you and Mr. Finchum.” *See Exhibit “A”* – May 19th, 2021 Email from John Fleming.

Almost a year after litigation had commenced, on September 2nd, 2022, Nacogdoches County Attorney John Fleming disclosed that he also wrote a second email on May 19th, 2021 to attorney Courtney Luther with Disability Rights of Texas. In that email Fleming tells her that, “one non-lawyer employee and one law school intern within our office listened to jail calls between you and Brandon Finchum.” “The employee has a recollection of listening to three calls between you and Mr. Finchum but may have listened to more.” *See attached Exhibit “B”* – May 19th, 2021 John Fleming email to Disability Rights of Texas attorney Courtney Luther.

Only after this litigation commenced did the Defendant disclose there were, in fact, additional attorney-inmate calls listened to by Nacogdoches County, specifically “three” or “more” calls were listened to by a non-lawyer employee and at least one call was listened to by a law school intern.

Courtney Luther and Paul Anderson are civil rights attorneys. Both attorneys were investigating claims of Nacogdoches County jailer abuse and appear to have been specifically targeted to have their telephone calls with Plaintiff Brandon Finchum listened to by “non-lawyer employees” and “interns” of the Nacogdoches County Attorney’s Office. Specifically, in his September 2nd, 2022 deposition, Nacogdoches County John Fleming testifies, “I am aware that Holly George and Jose Castaneda listened either to all or part of the phone calls between Ms. Luther and Mr. Finchum.” *See Exhibit “C”* - John Fleming Deposition 2; Page 33; L. 13-16.

John Fleming states in his deposition that he was aware Disability Rights of Texas was investigating jail abuse within the Nacogdoches County Jail.

Q. (Anderson): “The conversation you had with Courtney Luther sometime around the 19th of May 2021, did she advise you that DRTX had agreed to investigate abuse by Nacogdoches County jail staff and use of restraints on or around March 3rd, 2021?”

A. (Fleming): “I was aware of that, I don’t know if she advised it or not. Somehow I got that information, probably from her, but I don’t know for sure.” *See Exhibit “D”* - John Fleming Deposition 2; Pg. 39; L. 24-25; Pg. 40, L. 1-6

Q. (Anderson): “Did Ms. Luther disclose to you that she represented, or they were considering representing Brandon Finchum?”

A. (Fleming): “I don’t recall.”

Q. (Anderson): “But did she disclose to you there was an investigation into jail abuse?”

A. (Fleming): “I came about that information somehow. She probably shared it with me, but I might have picked it up someplace else.” *See Exhibit “E”* - John Fleming Depo. 2; Pg. 43, L. 17 – 25.

Q. (Anderson) “Do you have awareness that Disability Rights of Texas is related to – is involved in jail-related issues?”

A. (Fleming): “Yes, I am aware of that.”

Q. (Anderson): “Are they an advocacy group for jail or for inmates?”

A. (Fleming: “I think that they – I believe that is a part of what they do.” *See Exhibit “F”* - John Fleming Deposition 2; Pg. 6, L. 7 -15.

This lawsuit seeks to stop the Nacogdoches County Sheriff from illegally recording any attorney’s confidential calls from the Nacogdoches County jail and unlawfully disclosing those recordings to prosecutors, non-lawyer employees of the County, interns and any other third parties.

FACTUAL ALLEGATIONS RELEVANT TO ALL CLAIMS

On May 2nd, 2021 Brandon Finchum contractually retained attorney Paul Anderson, PLLC to represent Mr. Finchum in civil tort and civil rights violations allegedly committed against Mr. Finchum by the Nacogdoches County Sheriff’s Office. These include allegations and complaints that Brandon Finchum had been stabbed in the back with a pocketknife during an arrest by a Nacogdoches County Sheriff’s Office Deputy and that he was provided improper medical care while in custody.

Brandon Finchum called Paul Anderson’s office from the Nacogdoches County Jail on more than one occasion before and after May 2nd, 2021 to discuss his legal case including discussing a judicial complaint filed against a Nacogdoches County District Court trial court judge that remains open today.

Somewhere between May 2nd, 2021 and May 19th, 2021 at least one privileged attorney-client communication between Paul Anderson and Brandon Finchum was recorded by the Nacogdoches County Sheriff. One or more of those recordings was made available to the Nacogdoches County Attorney’s Office by accessing the jail’s telephone call recording system. The recording system’s administrator, Lt. Kevin Capel, has testified it is not known how many users have access or passwords to the system. See Plaintiff’s Motion for Leave Lt. Capel Deposition filed with Plaintiff’s Second Amended Complaint.

Nacogdoches County Attorney John Fleming confirmed that Holly George was the “non-lawyer” employee who listened to the recordings and then disclosed the contents of those recordings to one or more other persons, including a law-school intern.

Every incoming telephone call to the law offices of Paul Anderson, PLLC is answered by staff who say “law office.” Therefore, any recording made by the Nacogdoches County Sheriff involving a call

to Paul Anderson, PLLC would begin with the phrase “law office.” Any person listening to recordings of calls to Paul Anderson, PLLC would hear this phrase at the start of the recording. Thus, upon hearing that the call was to a law office, recording of the call should have ceased immediately.

The information obtained from one or more of those conversations was extraordinarily sensitive and confidential. The information was used to tortiously interfere in Paul Anderson’s legal representation of Brandon Finchum.

On May 19th, 2021, Nacogdoches County Attorney John Fleming wrote an email to Paul Anderson expressly stating, “It is my understanding the employee heard two statements that I will summarize: that you would meet your client at 1:30 p.m. and that you would try to call Mr. Finchum’s dad.” *See Exhibit “A”* – May 19th, 2021 Email from John Fleming to Paul Anderson. The reference to “Mr. Finchum’s dad” was not inadvertent or irrelevant. “Mr. Finchum’s dad” was in fact a confidential and important witness in a civil corruption investigation into the County of Nacogdoches District Attorney’s Office. This conversation is absolutely protected under attorney-client privilege.

This lawsuit seeks the disclosure by the Nacogdoches County Attorney’s Office of any and all persons, including non-employees, that had access to the recordings between Paul Anderson, Courtney Luther and Brandon Finchum and the confidential information those recordings contained.

Custodial inmates in the Nacogdoches County jail routinely contact their attorneys by telephone to discuss confidential matters. They do so with the understanding their conversations are private and not recorded, much less disseminated to prosecutors and third parties.

The Nacogdoches County Sheriff’s Office leads custodial inmates to believe that calls with their attorneys are confidential. There is no legitimate reason to record calls between custodial inmates and their attorneys without a warrant – the recording of attorney-client calls does nothing to further the Nacogdoches County jail’s security or public safety.

The interception of attorney-client privileged calls is illegal under Texas law and therefore illegal under federal wiretapping law.

Defendants appear to have no intention of ceasing their unlawful, unconstitutional eavesdropping on attorney-client communications. Both custodial inmates and their attorneys face substantial risk that the defendants named herein will continue to violate privilege and privacy as defined by the Federal and Texas Wiretap Acts.

AUTHORITIES

The Texas Rules of Evidence protect from disclosure the communications between a client and his counsel when they are kept confidential and are made to facilitate the rendition of legal services. See TEX. R. EVID. 503(b)(1); *Cameron v. State*, 241 S.W.3d 15, 19 (Tex. Crim. App. 2007); *McAfee*, 467 S.W.3d at 642–43.

The privilege applies not only to legal advice but attaches to complete communications between an attorney and the client. *In re Carbo Ceramics Inc.*, 81 S.W.3d 369, 374 (Tex.App.-Houston [14th Dist.] 2002, no pet.); *GAF Corp. v. Caldwell*, 839 S.W.2d 149, 151 (Tex.App.-Houston [14th Dist.] 1992, orig. proceeding).

The subject matter of the information contained in the communication is irrelevant when determining whether the privilege applies. See *Marathon Oil Co. v. Moye*, 893 S.W.2d 585, 589 (Tex.App.-Dallas 1994, no writ).

For a communication to be privileged, it must appear that the communication was made by a client seeking legal advice from a lawyer in that lawyer's capacity as such, and the communication must relate to the purpose for which the advice is sought; the proof, express or circumstantial, must indicate the client's desire for confidence and secrecy. *Duval County Ranch Co. v. Alamo Lumber Co.*, 663 S.W.2d 627, 634 (Tex.App.-Amarillo 1983, writ ref'd n.r.e.); *Ballard v. Ballard*, 296 S.W.2d 811, 816 (Tex.Civ.App.-Galveston 1956, no writ).

“A communication is ‘confidential’ if not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or

those reasonably necessary for the transmission of the communication.” Tex. R. Evid. 503(a)(5), 61 Tex. B.J. at 381 ; *DeAngelis*, 116 S.W.3d at 404.

Rule 503(b)(2) adds a special rule of privilege for criminal cases: “In criminal cases, a client has a privilege to prevent the lawyer or lawyer’s representative from disclosing any other fact which came to the knowledge of the lawyer or the lawyer’s representative by reason of the attorney-client relationship.” Tex. R. Evid. 503(b)(2), 61 Tex. B.J. at 381 ; *Cameron*, 241 S.W.3d at 19.

Invocation of the privilege is dependent upon the existence of an attorney-client relationship, which has been defined as a contractual relationship whereby an attorney agrees to render professional services for a client. *Tanox, Inc. v. Akin, Gump, Strauss, Hauer & Feld*, 105 S.W.3d 244, 254 (Tex.App.-Houston [14th Dist.] 2003, pet. filed), citing *Mellon Serv. Co. v. Touche Ross & Co.*, 17 S.W.3d 432, 437 (Tex.App.-Houston [1st Dist.] 2000, no pet.).

The relationship may be expressly created by contract, or it may be implied from the actions of the parties. *Tanox*, 105 S.W.3d at 254, citing *Sutton v. Estate of McCormick*, 47 S.W.3d 179, 182 (Tex.App.-Corpus Christi 2001, no pet.); *Vinson & Elkins v. Moran*, 946 S.W.2d 381, 405 (Tex.App.-Houston [14th Dist.] 1997, writ dismissed by agreement).

The privilege is intended to allow unrestrained communication and contact between the attorney and client in all matters in which the attorney’s professional advice or services are sought, without fear that these confidential communications will be disclosed by the attorney, voluntarily or involuntarily, in any legal proceeding. *Huie v. DeShazo*, 922 S.W.2d 920, 922 (Tex.1996); *In re Toyota Motor Corp.*, 94 S.W.3d 819, 822 (Tex.App.-San Antonio 2002, pet. denied).

CLAIMS FOR RELIEF/CAUSE OF ACTION

COUNT I: VIOLATION OF FEDERAL WIRETAP ACT, 18 U.S.C. § 2510 et. Seq.

Plaintiff incorporates all previous paragraphs by reference for all intents and purposes.

Plaintiff bring this claim on his own behalf. Paul Anderson, PLLC represents Brandon Finchum.

The Federal Wiretap Act broadly prohibits intercepting, disclosing, or using the contents of any wire, oral, or electronic communication.

The Nacogdoches County Sheriff's Office has acted in concert with the Nacogdoches County Attorney's Office to intercept (at least five or more) confidential communications between attorneys and their client and then divulged that confidential information to local prosecutors, non-lawyer employees and law-school interns, in violation of the Act. Extraordinarily sensitive and confidential information derived from those calls was disseminated to others.

Specifically, Defendants have intercepted more than five telephone calls between Plaintiff Brandon Finchum and Attorneys Luther and Anderson. The true extent of unlawfully intercepted calls between inmates and their attorneys will not be known without discovery.

Defendants used an electronic device to intercept attorney-client communications between attorneys Courtney Luther, Paul Anderson and their client Brandon Finchum. The electronic device was affixed to the wires of the Nacogdoches County jail's inmate telephone system and used in wire communications.

Subsequently, Defendants intentionally disclosed the intercepted conversations to third parties, specifically, an unidentified "non-lawyer employee" and "law-school intern" in the Nacogdoches County Attorney's office.

Under 18 U.S.C. § 2520 Plaintiff is entitled to actual and statutory damages, punitive damages, costs and attorney's fees.

COUNT II. VIOLATION OF TEXAS WIRETAP ACT

(Tex. Civ. Prac. & Rem. Code § 123.001, et seq.)

A defendant violates the Texas Wiretap Act when he:

"[I]ntercepts, attempts to intercept, or employs or obtains another to intercept or attempt to intercept the communication;"

"uses or divulges information that he knows or reasonably should know was obtained by interception of the communication." (Tex. Civ. Prac. & Rem. Code § 123.002(a).

Defendants have violated, and may be continuing to violate, Plaintiff attorneys' and custodial inmates' rights under the Texas Wiretap Act. Defendants have intercepted more than five telephone calls between Plaintiff Brandon Finchum and his Attorneys, Courtney Luther and Paul Anderson. Paul Anderson, Courtney Luther and Brandon Finchum are directly affected by the information divulged or used by Nacogdoches County.

COUNT III. INVASION OF PRIVACY

Texas Courts have expressly allowed for the common law cause of action for the unreasonable intrusion upon the seclusion or private affairs of another. Intrusion upon seclusion is an invasion of privacy claim for over-reaching and over-snooping.

For intrusion upon seclusion to occur, Defendants must intrude upon the solitude, seclusion, or private affairs of another; the intrusion would *be highly offensive* to a reasonable person, and the plaintiffs suffered an injury as a result. *Valenzuela v Aquino*, 853 S.W.2d 512, 513 (Tex. 1983). Defendants' conduct here is highly offensive.

Under the U. S. Constitution's Fourth Amendment, a person is always constitutionally protected against illegal search and seizure. Custodial inmates do not have an expectation of privacy, lawful or otherwise, *except* when they call their attorneys about their legal matter.

The County of Nacogdoches knowingly and intentionally invaded the constitutional right to privacy of confidential client attorney communications.

COUNT IV. VIOLATION OF THE FIRST, FOURTH, FIFTH, SIXTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION

The 4th Amendment guarantees the right of a person "to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." *U.S. Const. Amend. IV*. The 14th Amendment guarantees due process of law. Such violations are actionable pursuant to 42 U.S.C. Sections 1983 and 1988. The Fourth Amendment of the U.S. Constitution prohibits unreasonable searches. The Defendants

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seriously threaten the Fourth Amendment rights of Plaintiff attorneys and their clients who have a reasonable expectation of privacy when they make telephone calls.

The Sixth Amendment entitles criminal defendants to effective assistance of counsel, which includes confidential and timely attorney-client communication. Similarly, the First, Fifth and Fourteenth Amendments protect a custodial inmate's right to access the courts, which is violated when government officials infringe on confidential and timely attorney-client communication.

There is no guarantee Defendants will not continue to violate Brandon Finchum's or any other custodial inmate's privileged attorney-client communications.

Plaintiff brings claims for actual damages and punitive damages against all Defendants under 42 U.S.C. § 1983 because the Defendants, acting under color of law, wiretapped five or more of Brandon Finchum's conversations with his attorneys Courtney Luther and Paul Anderson IN violation of protected rights under the 4th and 14th Amendments of the U.S. Constitution.

Plaintiff Seeks to Establish a *Monell* Claim under 42 U.S. § 1983.

Plaintiff Brandon Finchum seeks to amend his Original Complaint to establish a "Monell" claim against the County of Nacogdoches. *Monell v. Dept. Social Services*; 436 U.S. 658 (more) 98 S. Ct. 2018; 56 L. Ed. 2d 611. Plaintiff Brandon Finchum can establish that Nacogdoches County has the capability, expertise, resources, technology, and dedicated staff to avoid listening to privileged communications between attorneys and Nacogdoches County Jail inmates but has no written policy, rule or regulation prohibiting the practice. Nacogdoches County has never produced or identified a single written policy document defining, outlining or guiding its employees about the "significance of privileged communications" between attorneys and inmates.

Nacogdoches County Attorney John Fleming states in his September 2nd, 2022 deposition:

Q. (Anderson): "Is there a [Nacogdoches] County policy prohibiting the listening of attorney phone calls from inmates at the Nacogdoches County Jail?"

A. (Fleming) “Not that I’m aware of.” *See Exhibit “G”* - Fleming Deposition 2; Page 37,

L 7 – 10

Q. (Anderson): “Apparently there is no County policy to prevent the recoding of attorney phone calls from the jail from inmates, is there?”

A. (Fleming): “I don’t believe that there is a written policy that says . . .” *See Exhibit “H”* - Fleming Deposition 2; Pg. 38, L.20 - 24.

Q. (Anderson): “How are you going to prevent this from never happening again if you have no policy?”

A. (Fleming): “That goes to management style and how I work within our office.” *See Exhibit “I”* - Fleming Deposition 2; Pg. 39, L.8 12.

Q. (Anderson): “Do you know if you have – does the Nacogdoches County Attorney’s Office have an employee or policy manual?”

A. (Fleming): “Not the County Attorney’s Office.”

Q. (Anderson): “Does an employee of the Nacogdoches County Attorney’s Office agree to abide by a County employee manual, a policy manual of some kind?”

A. (Fleming): “That’s my understanding, yes.”

Q. (Anderson): “Does that manual to your understanding have anything in it regarding listening to attorney/client phone calls?”

A. (Fleming): “Not that I am aware of.” *See Exhibit “J”* - John Fleming Depo 1; Pg.37, L 16- 25, Page 38; L. 1 -3.

Q. (Anderson): “Do you know of any documents that Sheriff Bridges possesses that give guidance from any agency, law enforcement or otherwise, on the recording of phone calls between clients and their attorneys from jail?”

A. (Fleming): “I don’t – I don’t know. I don’t know what he has or does not have.” *See Exhibit “K”* - John Fleming Deposition 1; Pg. 52, L. 22 – 25; Pg. 53; L. 1-3.¹

Lt. Capel testifies that he is the only one that works on the jail recording system but that he has no authority to change policies or use of the system and that all polices come directly from the Sheriff. Lt. Capel states in his deposition that changes to the system cannot happen without the knowledge or “authority” of Sheriff Jason Bridges or Major Crisp. *See Exhibit “L”* - Lt. Capel Deposition; Pg. 42, L. 11- 25.

Nacogdoches County produced employee Lt. Kevin Capel to testify about the jail’s recording system and he was asked:

Q. (Anderson): “Are you comfortable being the person that is being held accountable for knowing the most about this system in the jail?”

A. (Lt. Capel): “Yes.”

Q. (Anderson): “And yet you have never read the manual?”

A. (Lt. Capel): “No sir, I’ve not read the manual.” *See Exhibit “M”* - Lt. Capel Depo. Pg. 12, L. 25; Pg. 13, L. 1-5.

Q. (Anderson): “Do you possess a physical copy of the manual?”

A. (Lt. Capel): “I do not.” *See Exhibit “N”* - Lt. Capel Deposition; Pg. 49, l. 25; Pg. 50, L. 1-2.

Nacogdoches County does not even know how many users have access to the jail telephone call and recording system. Lt. Capel testified:

Q. (Anderson): “Are you aware of how many users have access to this system?”

A. (Lt. Capel): “ Many users, I don’t know the number.” *See Exhibit “O”* - Lt. Capel Deposition; Pg. 13, L. 9 -11.

And,

¹ John Fleming states some variant of; “I don’t know,” I’m not sure,” or “I don’t remember” no less than 107 times in response to deposition questions presented to him at his deposition on September 2nd, 2022.

Q. (Anderson): “Do you have a sense of how many other Nacogdoches County employees have a password for this system?”

A. (Lt. Capel): “No sir, I do not know the number of how many people.” *See Exhibit “P”* - Lt. Capel Deposition; Pg. 13, L. 22-25; Pg. 14, L. 1-3.

It is an understatement that Nacogdoches County has no clue how many people have access to its jail telephone recording system.

Nacogdoches County’s clearly non-existent policy about the permissive and unchecked listening and recording of confidential telephone calls between attorneys and clients amounts to an unconstitutional policy.

The unconstitutional practice of listening to attorney-client privileged communications has been exercised repeatedly by Nacogdoches County. The Nacogdoches County Sheriff’s Office has a pattern of constitutional violations so prevalent in the department that the practice of listening to privileged communications between inmates and attorneys is considered customary and ordinary.

Nacogdoches County Attorney John Fleming testifies that he “took steps to avoid this happening again” and “something like this will never happen again.” Absolutely no evidence has been produced by Nacogdoches County demonstrating that any steps have been taken at all. In fact, testimony will show that Nacogdoches County has absolutely no control over the security or access of the system used to record and listen to inmate telephone calls made to attorneys. Nacogdoches County has absolutely no idea how many users have access to or possess passwords for the County jail recording system.

Plaintiff Brandon Finchum’s lawsuit has exposed Nacogdoches County’s conscious indifference and willful ignorance toward preventing unlawful violations of interfering in constitutionally-protected attorney-client privileged communications.

DECLARATORY JUDGMENT

Defendants’ unlawful actions are an ongoing threat to Plaintiff’s rights under state and federal law and the U.S. Constitution.

“[A]ny person whose wire, oral, or electronic communication is intercepted, disclosed, or intentionally used in violation of” the Federal Wiretap Act is entitled to seek declaratory and/or injunctive relief. 18 U.S.C. § 2520(b)(1).

A person whose constitutional rights are violated has standing to seek declaratory relief under 28 U.S.C. § 2201.

INJUNCTIVE RELIEF

Defendants’ unlawful actions are an ongoing threat to Plaintiff’s rights under state and federal law and the U.S. Constitution.

“[A]ny person whose wire, oral, or electronic communication is intercepted, disclosed, or intentionally used in violation of” the Federal Wiretap Act is entitled to seek declaratory and/or injunctive relief. 18 U.S.C. § 2520(b)(1).

“A person who establishes a cause of action under the Texas Wiretap Act is entitled to ... an injunction prohibiting a further interception, attempted interception, or divulgence or use of information obtained by interception.” Tex. Civ. Prac. & Re. Code § 123.004(1).

ATTORNEY’S FEES AND COSTS

Plaintiff requests he be awarded his attorney’s fees and costs of litigation.

“[A]ny person whose wire, oral, or electronic communication is intercepted, disclosed, or intentionally used in violation of the Federal Wiretap Act is entitled to seek declaratory and/or injunctive relief.” 18 U.S.C. § 2520(b)(3).

A person who “establishes a cause of action under the Texas Wiretap Act is entitled to ... reasonable attorney’s fees and costs.” Tex. Civ. Prac. & Re. Code § 123.004(5).

Further, under 42 U.S.C. § 1988, a party who prevails in a suit filed under 42 U.S.C. § 1983 may be awarded reasonable attorneys’ fees.

NO QUALIFIED IMMUNITY

The Nacogdoches County Sheriff and Nacogdoches County, Texas do not have qualified immunity under the facts and circumstances of this case.

Qualified immunity shields officers from liability unless their conduct violates "clearly established statutory or constitutional rights of which a reasonable person would have known." *Pearson v. Callahan*, 555 U.S. 223, 231 (2009) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)). When officers invoke qualified immunity [for example,] at summary judgment, courts ask two questions: (1) whether the evidence viewed in the light most favorable to the plaintiff shows that the officers violated a constitutional right, and (2) whether the unlawfulness of their conduct was "clearly established" at the time. *District of Columbia v. Wesby*, 138 S. Ct. 577, 589 (2018).

Nacogdoches County's gross negligence as to the training and supervision of its employees and the conduct of deliberately singling out the telephone calls of specific attorneys is constitutionally abhorrent and Plaintiff deserves the judgment sought.

REQUEST FOR PROTECTIVE ORDER

Plaintiff Brandon Finchum is currently a custodial inmate of the Nacogdoches County Sheriff's Office but is currently in the custody of the Jasper County Sheriff's Office. Plaintiff Brandon Finchum seeks a Protective Order from the Court preventing and prohibiting the physical transfer of Brandon Finchum back to Nacogdoches County jail until the time of his trial. Brandon Finchum has credible reasons to be in fear of his safety while in physical custody at the Nacogdoches County Jail.

REQUEST FOR JURY TRIAL

Plaintiff demands a jury trial.

DAMAGES

Under 18 U.S.C. § 2520 the Plaintiff is entitled to actual and statutory damages, punitive damages, costs and attorneys' fees.

Under Tex. Civ. Prac. and Rem. Code § 123.004 a person is entitled to:

An injunction prohibiting a further interception, attempted interception, or divulgence or use of information obtained by interception;

Statutory damages of \$10,000 for EACH occurrence;

All actual damages in excess of \$10,000; and,

Punitive damages in an amount determined by the court or jury.

RELIEF REQUESTED

Plaintiff respectfully requests this court to grant the following relief:

Issue declaratory relief stating Defendants' practices of intercepting, disclosing and using confidential attorney-client communications are unlawful;

Prohibit Defendants from disclosing, and using confidential attorney-client communications;

Order Defendants to produce to Plaintiff a copy of every recording made of communications between Courtney Luther, Paul Anderson and Brandon Finchum;

Award reasonable attorney's fees, litigation expenses and court costs; and,

Plaintiff Brandon Finchum further prays for all other relief, both legal and equitable, to which he may be justly entitled, including injunctive relief to prevent further retaliation.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that judgment be rendered against the Defendants, for an amount in excess of the jurisdictional minimum of this Court.

Respectfully submitted,

PAUL ANDERSON, PLLC



Paul V. Anderson
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Tel. 936.305.5600
E-mail: paul@paulandersonlaw.com
Attorney for Brandon Finchum

CERTIFICATE OF CONFERENCE

Counsel for Plaintiff and Defendants conferred by telephone September 8th, 2022 and counsel for Defendants stated they were opposed to the Motion for Leave.

Counsel conferred by telephone on Friday, November 11th, 2022 at 11:00 a.m. and discussed substantive issues related to Plaintiff's Motion for Leave and Amended Complaint.

Plaintiff's Counsel provided Defendant's Counsel a copy of the Motion for Leave and Amended Complaint on Thursday morning, November 17th, 2022 and prior to a conference by telephone on Thursday, November 17th, 2022. After conferencing, Defendant's Counsel stated its opposition to the Motion.

A handwritten signature in black ink, appearing to be the initials 'AP' with a long horizontal stroke extending to the right.

From: **John Fleming** <jfleming@co.nacogdoches.tx.us>
Date: Wed, May 19, 2021 at 7:23 PM
Subject: PIA Request Dated May 5, 2021, Re: Brandon Finchum
To: <paul@paulanderson.law>

Paul:

In connection with responding to your open records request dated May 5, 2021, a non lawyer employee of our office listened to a jail call between you and Mr. Finchum. I do not believe it was listened to with any ill intent. It is my understanding that the employee did not hear anything of substance. It is my understanding the employee heard two statements that I will summarize: that you would meet with your client at 1:30 p.m. and that you would try to call Mr. Finchum's dad. Although the employee was not directed to listen to the call, I take responsibility for what employees of this office do or don't do.

As stated, I take responsibility for anything that happens in this office as I should. Obviously, I did not emphasize to the employee the significance of privileged communications. I have discussed this with the employee and instructed the employee not to disclose to anyone anything heard in the recording. In addition, I have taken steps to avoid this happening again. I believed that you needed to know this had happened.

Thank you.

John Fleming

--

John Fleming
Nacogdoches County Attorney
101 W. Main Street, Room 230
Nacogdoches, Texas 75961
Phone 936 560 7789
Facsimile 936 560 7809

--

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From: **John Fleming** <jfleming@co.nacogdoches.tx.us>
Date: Wed, May 19, 2021 at 8:04 PM
Subject: Jail Calls between Ms. Luther and Brandon Finchum
To: <cluther@disabilityrightstx.org>

Ms. Luther:

Thank you for taking my call today and I am sorry for the long call but I felt it was warranted.

In connection with responding to an open records request from attorney Paul Anderson, one non lawyer employee and one law school intern within our office listened to jail calls between you and Brandon Finchum. I do not believe there was any ill intent at all. The employee has a recollection of listening to 3 calls between you and Mr. Finchum but may have listened to more. The law school intern listened to one call. Although neither person was directed to listen to privileged communications, I take responsibility for not emphasizing the significance of privileged communications. And, naturally, I take full responsibility for anything that happens in this office.

Once I realized what had happened, we separated the intern and the employee from any work on the open records response.

Obviously, I did not emphasize to the employee or the intern the significance of privileged communications. I have discussed this with the employee and the intern and instructed both not to disclose to anyone anything heard in the recording. In addition, I have taken steps to avoid this happening again. As I mentioned, we contacted the ethics helpline and they were very knowledgeable in my opinion. We appreciated their thoughts and suggestions and will take the steps they suggested so that something like this will never happen again.

I am very willing to talk to any of your supervisors. I will answer any questions that need to be answered. I am happy to furnish your office with details of what we are doing to rectify this circumstance and prevent repetition. If there is any information you need from me, please let me know. As you know, there are a lot of details and this is really more of a summary of what I mentioned.

I am sorry for this circumstance and want to make sure that you and your office get any questions answered.

Thank you.

John F.

--
John Fleming

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

BRANDON FINCHUM,)
)
Plaintiff,)
) CIVIL ACTION
VS.) NO. 9:21-CV-285
) JURY DEMAND
NACOGDOCHES COUNTY,)
)
Defendant.)

ORAL AND VIDEOTAPED DEPOSITION OF
JOHN FLEMING
30 (b) (6) DEPOSITION
SEPTEMBER 2, 2022

ORAL AND VIDEOTAPED DEPOSITION OF JOHN FLEMING,
produced as a witness at the instance of the PLAINTIFF,
and duly sworn, was taken in the above-styled and
numbered cause on September 2, 2022, from 12:32 p.m. to
1:35 p.m., before Jan Newman Carter, CSR in and for the
State of Texas, reported by machine shorthand, at the
Nacogdoches County Courthouse Annex, 203 West Main
Street, Nacogdoches, Texas, pursuant to the Federal
Rules of Civil Procedure and the provisions stated on
the record or attached hereto.



1 A. I don't know who that is necessarily, but I'd
2 say no.

3 Q. Clay Thomas?

4 A. No.

5 Q. John Tatum?

6 A. No.

7 Q. Scott Tatum?

8 A. No.

9 Q. Bob Flournoy?

10 A. No.

11 Q. Johnny Weismuller?

12 A. No.

13 Q. Courtney Luther?

14 A. I'm aware that Holly George and Jose Castaneda
15 listened either to all or part of the phone calls
16 between Ms. Luther and Mr. Finchum.

17 Q. Do you recall how long those phone calls were?

18 A. No.

19 Q. The system has been in place for a long time,
20 but you've been around a long time. Do you recall when
21 it was purchased?

22 A. No, sir.

23 Q. Would you have anything to do with that?

24 A. If they were purchased -- on the review of the
25 contract.

1 between attorney and clients if there's no recording
2 that warns that it's being recorded and possibly
3 monitored.

4 Q. But yet this is "something that will never
5 happen again."

6 A. It's something I hope will never happen again
7 in our office.

8 Q. How are you going to prevent this from never
9 happening again if you have no policy?

10 A. That goes to management style and how I work
11 within our office.

12 MR. ANDERSON: If you give me a few minutes
13 just to kind of review here, I think I can wrap it up,
14 Robert. Are you going to have questions?

15 MR. DAVIS: Probably not. But if you're
16 going to take a few minutes though, I'll go talk to them
17 and see if we have any follow-up.

18 THE VIDEOGRAPHER: Off the record, the time
19 is approximately 1:20 p.m.

20 (Break taken from 1:00 to 1:29 p.m.)

21 THE VIDEOGRAPHER: We're now back on the
22 record, the time is approximately 1:29 p.m.

23 Q. (BY MR. ANDERSON) Mr. Fleming, a couple of
24 quick questions and we're done. The conversation that
25 you had with Courtney Luther sometime around the 19th of

1 May 2021, did she advise you that DRTX had agreed to
2 investigate abuse by Nacogdoches County jail staff and
3 use of restraints on or around March 3rd, 2021?

4 A. I was aware of that, I don't know if she
5 advised it or not. Somehow I got that information,
6 probably from her, but I don't know for sure.

7 Q. Do you know the conclusion of that
8 investigation into jail abuse that occurred on March
9 3rd, 2021?

10 A. I do not.

11 Q. Are you aware that the Open Records Request
12 that is allegedly the basis of this lawsuit which has
13 been proffered as Exhibit 2 requests video and nothing
14 else and related to an assault by Molly Brown on Brandon
15 Finchum?

16 A. I don't understand, I don't understand your
17 question. It looks like it's related to videos, medical
18 records and any documents surrounding the incident.

19 Q. The incident being on March 3rd, 2021, which
20 was a complaint Brandon Finchum had lodged with your
21 office and other folks about being assaulted by Molly
22 Brown.

23 A. I'm not aware that -- I don't have a
24 recollection that he alerted our office.

25 Q. Okay. But we do have this email here which is

1 MR. ANDERSON: Can I keep this?

2 MR. DAVIS: Yeah.

3 Q. (BY MR. ANDERSON) Did you have an
4 understanding that Brandon Finchum had a legal
5 relationship with Disability Rights?

6 A. I understood there was some relationship, I
7 don't know how to define it.

8 Q. You have apparent sensitivity to privileged
9 communications with lawyers, but you are not certain
10 about the clarity of the representation relationship
11 between here?

12 A. (Witness nods.)

13 Q. Would you apply your same axion then when in
14 doubt there's probably a relationship?

15 MR. DAVIS: Objection, form.

16 A. When in doubt disclose.

17 Q. (BY MR. ANDERSON) Did Ms. Luther disclose to
18 you that she represented or they were considering
19 representing Brandon Finchum?

20 A. I don't recall.

21 Q. But she did disclose to you there was an
22 investigation into jail abuse?

23 A. I came about that information somehow. She
24 probably shared it with me, but I might have picked it
25 up someplace else.

1 Disability Rights of Texas. So, other than this, this
2 is it.

3 Q. Do you know what Disability Rights of Texas
4 does?

5 A. I feel like they're an advocacy group with
6 those who may be disabled.

7 Q. Do you have awareness that Disability Rights of
8 Texas is related to -- is involved in jail-related
9 issues?

10 A. Yes, I am aware of that.

11 Q. When you testify you believe they're an
12 advocacy group or do you recall if they're -- are they
13 an advocacy group for jail or for inmates?

14 A. I think that they -- I believe that is part of
15 what they do.

16 Q. When you spoke to Ms. Luther as you're
17 referring to here, did she describe for you the role and
18 the function of Disability Rights of Texas?

19 A. I don't recall.

20 Q. Would she have told you that she was a licensed
21 Texas attorney?

22 A. I assumed that she was a licensed Texas
23 attorney.

24 Q. Do you recall having any time or a moment where
25 you were not aware or you did not think of her as a

1 inmates to attorneys?

2 A. I wouldn't necessarily be advised of it, no.

3 Q. Would you advise against it?

4 MR. DAVIS: Objection, form. That calls
5 for an opinion as to how he would advise his client, and
6 it's privileged.

7 Q. (BY MR. ANDERSON) Is there a -- yeah. Is
8 there a County policy against listening to attorney
9 recorded phone calls to inmates?

10 A. Not that I'm aware of.

11 Q. There's no County policy prohibiting the
12 listening of attorney phone calls from inmates at the
13 Nacogdoches County jail.

14 A. If there's a warning, there's probably not a
15 policy. And I do not know what the policy would be
16 otherwise.

17 Q. Does the Nacogdoches County jail have a policy
18 of excepting phone calls to attorneys from being
19 recorded?

20 MR. DAVIS: Objection, form.

21 MR. ANDERSON: This is 12(b)(6), this is
22 policies, procedures, Robert.

23 MR. DAVIS: You're asking Sheriff's office
24 policy and procedure.

25 MR. ANDERSON: Nacogdoches County.

1 MR. DAVIS: Okay. Make it Nacogdoches
2 County.

3 Q. (BY MR. ANDERSON) Does Nacogdoches County have
4 a policy which would be inclusive of the Sheriff's
5 office to notify lawyers when their calls have been --

6 MR. DAVIS: I'm going to object. If you
7 want to make it Nacogdoches County, I don't have a
8 problem with that. But you have to understand that
9 every Constitutionally-elected office can have their own
10 policies and procedures. But if you want to ask him
11 about Nacogdoches County, great. But that doesn't mean
12 that this witness can testify or has been prepared to
13 testify about what various county-elected officials who
14 are Constitutionally-elected what individual policies
15 they may have. I mean, this witness has been prepped on
16 it wouldn't know what individually
17 Constitutionally-elected officials, what policy they
18 have. But if you want to ask about the County policy,
19 feel free to do that.

20 Q. (BY MR. ANDERSON) Apparently there's no County
21 policy to prevent the recording of attorney phone calls
22 from the jail from inmates, is there?

23 A. I don't believe that there is a written policy
24 that says -- I'll put it to you this way: I do not
25 believe that there is a policy to listen to phone calls

1 between attorney and clients if there's no recording
2 that warns that it's being recorded and possibly
3 monitored.

4 Q. But yet this is "something that will never
5 happen again."

6 A. It's something I hope will never happen again
7 in our office.

8 Q. How are you going to prevent this from never
9 happening again if you have no policy?

10 A. That goes to management style and how I work
11 within our office.

12 MR. ANDERSON: If you give me a few minutes
13 just to kind of review here, I think I can wrap it up,
14 Robert. Are you going to have questions?

15 MR. DAVIS: Probably not. But if you're
16 going to take a few minutes though, I'll go talk to them
17 and see if we have any follow-up.

18 THE VIDEOGRAPHER: Off the record, the time
19 is approximately 1:20 p.m.

20 (Break taken from 1:00 to 1:29 p.m.)

21 THE VIDEOGRAPHER: We're now back on the
22 record, the time is approximately 1:29 p.m.

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24 quick questions and we're done. The conversation that
25 you had with Courtney Luther sometime around the 19th of

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

BRANDON FINCHUM,)
)
Plaintiff,)
) CIVIL ACTION
VS.) NO. 9:21-CV-285
) JURY DEMAND
NACOGDOCHES COUNTY,)
)
Defendant.)

ORAL AND VIDEOTAPED DEPOSITION OF
JOHN FLEMING
SEPTEMBER 2, 2022

ORAL AND VIDEOTAPED DEPOSITION OF JOHN FLEMING,
produced as a witness at the instance of the PLAINTIFF,
and duly sworn, was taken in the above-styled and
numbered cause on September 2, 2022, from 10:51 a.m. to
12:31 p.m., before Jan Newman Carter, CSR in and for the
State of Texas, reported by machine shorthand, at the
Nacogdoches County Courthouse Annex, 203 West Main
Street, Nacogdoches, Texas, pursuant to the Federal
Rules of Civil Procedure and the provisions stated on
the record or attached hereto.



1 that time.

2 Q. Is he still interning with you?

3 A. He is an employee now.

4 Q. What is his responsibilities?

5 A. He is a paralegal.

6 Q. Is he going to law school?

7 A. He's been to law school.

8 Q. Is he in law school?

9 A. He's finished law school.

10 Q. Waiting for bar exam, bar results?

11 A. Yes.

12 Q. Very good. I wish him the best.

13 Did you provide to Ms. George anything in
14 writing about this recording conduct or listening to the
15 phone calls conduct?

16 A. If I did, I have not been able to locate it.

17 Q. Do you know if you have a -- does the
18 Nacogdoches County Attorney's office have an employee or
19 policy manual?

20 A. Not the County Attorney's office.

21 Q. Does an employee of the Nacogdoches County
22 Attorney's Office agree to abide by a County employee
23 manual, a policy manual of some kind?

24 A. That's my understanding, yes.

25 Q. Does that manual to your understanding have

1 anything in it regarding listening to attorney/client
2 phone calls?

3 A. Not that I'm aware of.

4 Q. Have you taken any concrete steps to put or
5 express into writing the significance of privileged
6 communications to any of your employees since May 19th?

7 A. If I have, I've not been able to locate it.

8 Q. If you had, how would you have done that?

9 A. It would probably have been done by email if
10 we're talking about in writing.

11 Q. Like a group email, staff email.

12 A. Possibly.

13 Q. If you had done this and there is an email out
14 there to your staff commenting on the significance of
15 privileged communications, would you have sent that to
16 all lawyer and non-lawyer employees or different
17 buckets?

18 A. I don't know if I would have sent it to all or
19 not. It could have been focused -- if it was sent at
20 all, it would have possibly been sent to everyone. But
21 the only person that had access to it was Holly as I
22 understood it, and then I probably would have sent
23 something to Jose. But honestly, I'm not sure that I
24 did put anything in writing because I couldn't find it
25 on my email.

1 is knock out a couple of loose -- let me just run
2 through this real quick, and then I think I am ready to
3 move on.

4 MR. DAVIS: Okay.

5 Q. (BY MR. ANDERSON) If Sheriff Bridges were to
6 call you for your advice today on the recording of
7 telephone calls between inmates and attorneys only, what
8 would you say?

9 MR. DAVIS: I'm going to object to that, it
10 calls for speculation and it asks for a presumptive
11 attorney/client privileged communication.

12 Q. (BY MR. ANDERSON) Is there a policy that you
13 would refer Sheriff Bridges to about recording attorney
14 calls from inmates if he were to call and ask you?

15 MR. DAVIS: Same objection.

16 Q. (BY MR. ANDERSON) Is there anything in writing
17 you would refer Sheriff Bridges to that would refer and
18 give guidance on the recording of attorney/client calls
19 from inmates?

20 MR. DAVIS: Same objection, calls for
21 attorney/client communication.

22 Q. (BY MR. ANDERSON) Do you know of any documents
23 that Sheriff Bridges possesses that gives guidance from
24 any agency, law enforcement or otherwise, on the
25 recording of phone calls between clients and their

1 attorneys from jail?

2 A. I don't -- I don't know. I don't know what he
3 has or doesn't have.

4 Q. Very good. Is Holly George still employed --

5 A. Yes.

6 Q. -- with the County Attorney? And Mr.
7 Castaneda, Castaneda, he's employed as a full-time
8 employee now with your office?

9 A. Yes.

10 Q. Has Nacogdoches County Attorney's office
11 required -- has Nacogdoches County Attorney's office
12 notified any other attorneys, licensed attorneys, that
13 their calls have been listened to or recorded excluding
14 myself and Ms. Luther?

15 MR. DAVIS: I'm going to object to the
16 multifarious nature of the question. And I can tell you
17 kind of what I'm --

18 MR. ANDERSON: Well, here's the corollary.
19 I hear your objection; but if you want to object to the
20 multifarious, if it's too broad, then I have a list of
21 24 and I can just run down -- actually I won't --

22 MR. DAVIS: I think it's -- Paul, my
23 distinction is recorded and listened to because we know
24 the jail recorded all conversations up until the
25 attorneys' names were added.

1 with you.

2 MR. DAVIS: Good, good.

3 MR. ANDERSON: I'm going to move on, I'll
4 move on.

5 MR. DAVIS: Stay under your 30(b)(6).
6 Okay?

7 Q. (BY MR. ANDERSON) I'm just trying to figure
8 out, because you can't remember who told you to do this,
9 the food chain of your employment -- food chain -- okay?
10 You answer directly to Major Crisp who answers to
11 Bridges, but you're a lieutenant, do you have anybody
12 beneath you that works on the system?

13 A. No, sir.

14 Q. It's you or above.

15 A. Yes.

16 Q. The policies about the system, are those from
17 you about how to use it to change these things, do you
18 have that authority?

19 A. No, sir. It has to go through the sheriff.

20 Q. Would you make a change to the system like
21 adding a recording without communicating to the sheriff?

22 A. No, sir.

23 Q. Would you make a change to this system without
24 communicating it to Major Crisp?

25 A. No, sir.

1 Brown trained you on this system?

2 A. It was probably within the first six months of
3 my advancement to lieutenant.

4 Q. When were you advanced to lieutenant?

5 A. Oh, about four years ago.

6 Q. So, at the point in time that Lieutenant Brown
7 gave you responsibility for the system, she just sat
8 down and trained you on it?

9 A. She just showed me how to pull the calls.

10 Q. Okay. Is that the extent of your training on
11 the system?

12 A. On this system I've learned how to do other
13 things as I've worked through the system by utilizing
14 it.

15 Q. And when was the very last time you looked at
16 this manual or referred to it?

17 A. I've looked at it and just leafed through it
18 probably two or three nights ago.

19 Q. Okay. You leafed through it?

20 A. Yes, sir.

21 Q. Did you focus on anything specific in this
22 manual?

23 A. I focused on removal, pulling of calls and
24 adding attorneys to the call log.

25 Q. Are you comfortable with being the person that

1 is being held accountable for knowing the most about
2 this system in the jail?

3 A. Yes.

4 Q. And yet you've never read the manual.

5 A. No, sir, I've not read the manual.

6 Q. Are you aware if Molly Brown ever read the
7 manual?

8 A. I am unaware of any activity she has taken.

9 Q. Are you aware of how many users have access to
10 this system?

11 A. Many users, I don't know the number.

12 Q. Do these many user accessors have passwords?

13 A. Yes.

14 Q. And what do they use the system for?

15 A. Be able to pull -- they can utilize it to pull
16 calls, investigators mostly.

17 Q. Do jailers use this system?

18 A. No.

19 Q. When you say no, is that ever?

20 A. Ever. Unless you're including me as the
21 jailers.

22 Q. Fair enough. Do you have a sense of how many
23 other Nacogdoches County employees have a password for
24 this system?

25 A. By sense do you mean number?

1 calls?

2 A. Yes.

3 Q. (BY MR. ANDERSON) When did you first become
4 aware that this lawsuit was about --

5 MS. O'DONOGHUE: The Court is calling.

6 (Ms. O'Donoghue answers phone call.)

7 (Off-the-record discussion.)

8 Q. (BY MR. ANDERSON) Lieutenant, I'm going to
9 move on, we're still on the record and I think I can
10 wrap this up with you, and I appreciate your time and
11 you being a gentleman, no doubt.

12 Okay. How long has -- you said it earlier,
13 repeat, how long has the IC System been in the Sheriff's
14 Department?

15 A. I didn't say earlier because I do not know.

16 Q. Was it there when you got there --

17 A. Yes.

18 Q. -- 17 years ago?

19 A. No. 17 years ago? Not to my knowledge.

20 Q. When do you recall it went in?

21 A. I don't recall when it went in.

22 Q. Was it in there when you became lieutenant four
23 years ago?

24 A. Yes.

25 Q. Okay. Do you possess a physical copy of the

1 manual?

2 A. I do not.

3 Q. When you were leafing through it, was that
4 online?

5 A. It was on PDF.

6 Q. Right. Do you currently have a list of numbers
7 that you could identify or are identifiable of attorney
8 calls from inmates that are prohibited from the jail?

9 MR. DAVIS: Objection, form.

10 Q. (BY MR. ANDERSON) Are there any inmates
11 prohibited from making calls through the system in the
12 jail today?

13 A. No.

14 Q. Do you use the feature -- we talked about it --
15 but an ability to prohibit an inmate from making a call,
16 do you use that feature?

17 A. Yes.

18 Q. When?

19 A. On disciplinary issues and when they're on
20 lockdown.

21 Q. Is it used often for disciplinary?

22 A. Not normally.

23 Q. I want to understand something quickly. So,
24 the phones are located where in the facility, the dorms?

25 A. In the dorms?

1 is being held accountable for knowing the most about
2 this system in the jail?

3 A. Yes.

4 Q. And yet you've never read the manual.

5 A. No, sir, I've not read the manual.

6 Q. Are you aware if Molly Brown ever read the
7 manual?

8 A. I am unaware of any activity she has taken.

9 Q. Are you aware of how many users have access to
10 this system?

11 A. Many users, I don't know the number.

12 Q. Do these many user accessors have passwords?

13 A. Yes.

14 Q. And what do they use the system for?

15 A. Be able to pull -- they can utilize it to pull
16 calls, investigators mostly.

17 Q. Do jailers use this system?

18 A. No.

19 Q. When you say no, is that ever?

20 A. Ever. Unless you're including me as the
21 jailers.

22 Q. Fair enough. Do you have a sense of how many
23 other Nacogdoches County employees have a password for
24 this system?

25 A. By sense do you mean number?

1 is being held accountable for knowing the most about
2 this system in the jail?

3 A. Yes.

4 Q. And yet you've never read the manual.

5 A. No, sir, I've not read the manual.

6 Q. Are you aware if Molly Brown ever read the
7 manual?

8 A. I am unaware of any activity she has taken.

9 Q. Are you aware of how many users have access to
10 this system?

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12 Q. Do these many user accessors have passwords?

13 A. Yes.

14 Q. And what do they use the system for?

15 A. Be able to pull -- they can utilize it to pull
16 calls, investigators mostly.

17 Q. Do jailers use this system?

18 A. No.

19 Q. When you say no, is that ever?

20 A. Ever. Unless you're including me as the
21 jailers.

22 Q. Fair enough. Do you have a sense of how many
23 other Nacogdoches County employees have a password for
24 this system?

25 A. By sense do you mean number?

1 Q. Yes.

2 A. No, sir, I do know the number of how many
3 people.

4 Q. More than you, right?

5 A. Yes, more than me.

6 Q. Less than ten? More than ten?

7 A. More than ten.

8 Q. A lot of people.

9 A. More than ten.

10 MR. DAVIS: Objection, form. And where is
11 this covered in your 30(b)(6) deposition notice,
12 Counsel?

13 MR. ANDERSON: Well, it's the manual and
14 I'm asking a question about the manual and I'm about
15 ready to wrap all of this up because he hasn't read the
16 manual. If you'd just give me a second to kind of prove
17 that, I'll move on and we're done with him.

18 I'm not pulling your leg on this, Robert,
19 he hasn't read the manual, and this is really -- if you
20 haven't read the manual, then you don't -- so, I just
21 want to cover a couple of features and make sure that...

22 MR. DAVIS: Okay.

23 Q. (BY MR. ANDERSON) You understand that this is
24 a very complicated system, right?

25 A. Yes.