

# Prosecutors in hot water over eavesdropping

POSTED ON SEPTEMBER 20, 2013

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Another case of eavesdropping on phone conversations between an attorney and a Yakima County jail inmate is prompting calls for the dismissal of the inmate's criminal charges and the appointment of a special prosecutor to investigate the eavesdropping.

The incident also has county Department of Corrections director Ed Campbell considering revoking all law enforcement access to jail calls unless approved by court order.

"These issues have caused me a great deal of concern because (the jail's phone monitoring system is) not being used as intended," Campbell said Thursday.

Officials haven't determined if the eavesdropping was accidental. They also say they don't know what if any, information law enforcement obtained.

It's the second time that eavesdropping on calls between county jail inmates and their lawyers has come to light. Last year, it was discovered that county sheriff's investigators had listened to calls between attorneys and Kevin Harper, the prime suspect in the 2011 Goggin family triple homicide.

Inmates are warned that their phone calls are recorded and the recordings can be used against them. However, calls between inmates and their defense attorneys are supposed to be blocked from being recorded in order to protect attorney-client privilege.

The latest incident that came to light stems from the case of Daniel Woolem, who was arrested in 2011 and is accused of dealing methamphetamine. His calls were monitored in May 2011, around the same time Harper's calls from jail were being monitored.

In both cases, a deputy prosecutor discovered the eavesdropping and reported it to defense attorneys and the court.

On Monday, Yakima County Prosecuting Attorney Jim Hagarty filed a request in Superior Court for the appointment of a special prosecutor to investigate the eavesdropping on two calls Woolem made from the jail to his attorney, as well as four calls to family or friends who then connected the call to his attorney's office.

In a motion to dismiss charges against Woolem, his attorney, Ricardo Hernandez, says the computerized jail house recordings were accessed with user names belonging to Hagarty and sheriff's detective Robert Tucker.

In a declaration filed in court by Hagarty last Friday, the prosecuting attorney says his user name "jthagarty" is used by several members of his office to access calls and that he did not listen to any of the calls between Woolem and his then-attorney, Tim Schoenrock.

"It is unknown who listened to the call, however no information was provided to the prosecutor in this case," prosecutors wrote in their opposition to Hernandez's motion to dismiss. Tucker's eavesdropping was accidental, prosecutors say, and he ceased listening to the calls as soon as he realized his error.

Hagarty on Thursday declined to comment beyond what he had already told the court because the case is pending. He said he had not heard that Campbell is considering revoking access to jail calls except through court order.

"It would be premature for me to comment on it or what his reasoning is," Hagarty said.

The Yakima County Department of Corrections maintains a list of attorneys' phone numbers that automatically blocks calls to those numbers from being recorded. When a number isn't blocked from being recorded, an automated message is played to both parties before the lines are connected.

Prosecutors say that means both Woolem and his former attorney heard the message because the attorney's cellphone number wasn't on the blocked calls list. Because they were informed they were being recorded, the two were inadvertently waiving attorney-client privilege, prosecutors argue.

Hernandez, in his motion to dismiss, said the eavesdropping was purposeful and in direct violation of attorney-client privilege.

"These calls were illegally intercepted," Hernandez wrote.

The two calls made directly to Schoenrock by the inmate Woolem were listened to for relatively short periods of time: 32 out of 203 seconds and 109 out of 728 seconds, respectively. The four third-party calls were listened to for longer durations, the longest being more than 12 minutes by the detective Tucker in a call Woolem made to his sister who connected him to a legal assistant of Schoenrock, according to court records.

Members of the prosecutor's office, including Hagarty, and corrections department staff have been summoned to testify at a Monday hearing in the case.

In September 2012, following a meeting with Hagarty after the call monitoring in the Harper case had come to light, Campbell instituted a rule that all law enforcement requests for access to jail calls must first be vetted by the prosecutor's office. That rule has remained in place since then.

Campbell said it's the responsibility of jail administrators to compile a list of attorneys in order to block the recording of calls between them and inmates. However, Campbell said it's important for attorneys to share home and cellphone numbers, information that would be more difficult for staff to discover, that they may also use to communicate with inmates in order to prevent accidental recording.

"There's really no way for us to know what attorney is assigned to what case and whether they have all their numbers entered," Campbell said.

Campbell said he will discuss changing the policy soon with county attorneys.

"It's a tool for investigations to help with criminal cases and these incidents give me great concern at this moment," Campbell said.

EDITOR'S NOTE: The headline has been changed to more clearly describe the story.





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**Rollo Smith** · Top Commenter · Cascade High School

I bet this clown runs again and sadly, elected again!

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**Maribel Hernandez-Green** · Top Commenter · Seattle Vocational Institute

When the Prosecutor knowingly and repeatedly breaks the law then all of his prosecutions come into the question. these laws don't just protect the criminals they protect all of us.

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**Greg Spearing** · Top Commenter · El Camino College

Criminallity is determined by a jury during a trial. A suspect's right to an attorney is essential in obtaining a fair trial. It's sad that so many of you are quick to throw the Bill of rights on this issue overboard but go bananas over the right to keep and bare arms. Those who love the Constitution most should be the most outraged at prosecutor misconduct if that is what it turns out to be.

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**Aaron Fowler** · Top Commenter · The US Navy

That was my thought, too. The people who cling to their constitutional rights don't want to afford them to those who may have committed a crime, though haven't had their day in court for it due to misconduct by the government.

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**Nick Hughes** · Top Commenter · Central Washington University

"...as well as four calls to family or friends who then connected the call to his attorney's office. ...." When a number isn't blocked from being recorded, an automated message is played to both parties before the lines are connected."....."Because they were informed they were being recorded, the two were inadvertently waiving attorney-client privilege, prosecutors argue."

In this case, I agree with the prosecutors. On the 4 calls that his family circumvented the system on purpose, AFTER getting the warning message, by apparently using a third party connection to bring his attorney into the conversation. I believe it is THEIR fault the call wasn't blocked. In a case like that, it could be easy to set up the case on purpose for an eavesdropping claim to then complain and have the case dismissed.

"Tucker's eavesdropping was ... [See More](#)

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WHY SO MANY LAWS PROTECTING CRIMINALS

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**Nick Hughes** · Top Commenter · Central Washington University

Ah yes. The ACLU, who has proven that criminals have become victims, and victims are criminals.

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**Aaron Fowler** · Top Commenter · The US Navy

Because of the Constitution, allowing everyone (you, me, the common thug down the street) keeping the government from railroading us on bogus charges.

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