









**DECLARATION OF WILLIAM DONAT**

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2 I, WILLIAM DONAT, being first duly sworn, under penalty of perjury under the laws of  
3 the United States declares and states:

4 1. I have personal knowledge of the matters asserted herein and am competent  
5 to testify thereto, save for those matters asserted on information and belief, and for those  
6 matters, I am informed and believe them to be true.

7 2. I am informed and believe Plaintiffs John Witherow and Donald York Evans  
8 have named me as a Defendant in a lawsuit in the United States District Court, District of  
9 Nevada entitled *Evans v. Inmate Calling Solutions, et. al.*, case number 3:08-cv-00353-  
10 GMN-VPC.

11 3. From October 2005 to February 2009, I was the Warden at Nevada State  
12 Prison ("NSP") located in Carson City, Nevada.

13 4. I am informed and believe that Plaintiffs have brought suit alleging that the  
14 policy to initially screen out-going legal calls to verify that the calls were being placed to  
15 attorneys or their offices from Unit 13 administrative segregation was improper.

16 5. I am informed and believe that the period of time at issue is from May 8, 2007  
17 to July 30, 2008. I suspect that Plaintiff's claims cease in July 2008 as that was right around  
18 the time a new telephone provider/system was installed.

19 6. During the period of May 8, 2007 to July 30, 2008, legal and personal calls  
20 were handled differently at NSP. Personal calls were recorded by a third party that had  
21 recording equipment that I think was located at its place of business and the Inspector  
22 General's Office. When calls were recorded, there was a special computer program that  
23 would allow prison staff to monitor the calls being recorded from prison's computers.

24 7. I had this program on my computer in my office and I could monitor any  
25 personal conversation that was also being recorded in the prison. I would often turn this  
26 program on and listen to out-going personal calls in the background as I did other work.

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1 8. There were several instances wherein my monitoring resulted in discovering  
2 serious safety and security issues. Once I heard a plan between an inmate and an  
3 unidentified man who was planning to obtain guns and carry out a murder in Las Vegas. I  
4 immediately relayed this information to the Nevada Inspector General's Office for  
5 investigation.

6 9. Another time I was monitoring an inmate's call when the inmate discussed his  
7 belief that a correctional officer had begun a relationship with the inmate's wife. This would  
8 be a serious violation on the part of staff and could possibly compromise the safety and  
9 security of the institution. An investigation was immediately initiated, but the officer resigned  
10 before the investigation was concluded and as of now the story can only be considered  
11 rumor as it was never confirmed.

12 10. I believe that the monitoring of personal calls in segregation was a common  
13 practice at NSP and occurred as a part of an officer's daily duties.

14 11. In May 2007 to July 2008, legal calls were handled differently than personal  
15 calls. Inmates were allowed an unlimited number of legal calls and often took advantage of  
16 this privilege.

17 12. In order to make a legal call, an inmate could designate a legal number using  
18 a form identifying the name and number of his attorney. The telephone provider would then  
19 put this number into their system which would automatically prevent recording of the call.  
20 Since the call was not being recorded, it could also not be monitored using the telephone  
21 providers system. Although generally this was the system for the rest of NSP, from May 8,  
22 2007 to July 30, 2008 there were special problems associated with providing inmates in Unit  
23 13 with telephone access.

24 13. In segregation inmates are locked down most of the time and are not allowed  
25 to freely move about the unit or which would allow them to "capture" the tier. Capturing the  
26 tier is when an inmate refuses to comply with orders instructing him to return to his cell,  
27 lockdown, or consent to being handcuffed. In such situations staff is required to physically  
28 restrain the inmate, creating disturbances and wasting valuable resources.



1 14. To prevent this problem and still provide inmates with the ability to make  
2 phone calls, in Unit 13 at NSP we used portable phones that would be handed to an inmate  
3 in his cell. This portable phone could then be used to make personal and legal calls.

4 15. There were only two portable phones for all of the inmates in Unit 13 so limits  
5 were placed on the number of personal calls that each inmate could make in a week, but  
6 legal calls were unlimited. Unlike in other areas of the prison where if another inmate is  
7 using the phone, an inmate could simply ask or go to another phone, there were only two  
8 phones for all of the inmates in administrative segregation.

9 16. The limitation on personal calls was designed to allow all the inmates in the  
10 unit access to phone to make their personal calls and all legal calls that were necessary. If  
11 restrictions were not placed on personal calls, I have no doubt that inmates would dominate  
12 the use of the phone and it would have created a problem in getting all inmates their  
13 personal and legal calls.

14 17. However, limiting the number of personal calls caused many of the inmates to  
15 attempt to circumvent this restriction by designating non-legal numbers as legal numbers.  
16 This meant that the inmate could justify making unlimited personal calls by claiming that the  
17 number was a legal number. Falsely designating a personal number as a legal number also  
18 meant that there would be no recording of these calls, which might have been an additional  
19 motivating factor for some inmates in designating personal numbers as legal numbers.

20 18. In a segregation unit there was also no way for staff to tell who the inmate  
21 was calling. Although an inmate could request the portable phone and make a legitimate  
22 legal call, if his attorney was unavailable or the call was short, the inmate could then make  
23 additional personal calls while the phone was still in his possession.

24 19. Officers could attempt to limit such abuse by watching inmates dialing the  
25 number they wished to call, but there was no way to make sure this was a legal number and  
26 once the officer left the cell, the inmate could simply hang-up and call another number.  
27 There was not enough manpower to stand guard over the portable phones during the  
28 duration of all calls and this would have required monitoring of some legitimate legal calls.

1           20.       These problems resulted in an increased abuse of the portable telephones  
2 and other inmates in segregation were being deprived of their opportunity to use the  
3 portable phone to make their allotted personal calls or legal calls.

4           21.       To deter and minimize abuse, the practice was that a correctional officer in  
5 the Unit 13 control room would monitor all out-going phone calls using two speaker boxes.  
6 Such monitoring occurred on all personal calls and only long enough on legal calls to verify  
7 that they were in fact legal calls.

8           22.       The initial screening of out-going legal calls was limited to identifying the party  
9 the inmate was calling. This initial screening was not supposed to last longer than a few  
10 seconds and terminated as soon as there was any indication that the inmate was speaking  
11 with an attorney or law office. In my opinion, this practice was the only way to deter abuse  
12 and allow other administrative segregation inmates an equal chance to use the phone.

13           23.       I am informed and believe that Plaintiffs Witherow and Evans allege that their  
14 attorney-client calls were being monitored for longer than initial confirmation. I was unaware of  
15 any such practice and never instructed any of my staff to monitor any legal call beyond the  
16 point of initial identification.

17           24.       At no time did I know or believe that any one of my officers or employees were  
18 listening or monitoring legal calls beyond the point of initial identification.

19           25.       During May 2007 to July 2008, I do not recall ever being asked by any third  
20 party to have prison staff listen or monitor any out-going legal calls beyond the point of initial  
21 confirmation.

22           26.       From May 2007 to July 2008, I do not recall ever obtaining any allegedly  
23 confidential information that was obtained from Plaintiff Witherow's legal calls or ever relaying  
24 any such information to any third party.

25           27.       From May 2007 to July 2008, I do not recall ever personally monitoring any of  
26 Plaintiff's out-going legal calls as the computer in my office would not have had access to those  
27 calls if they were made to a designated legal number.

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1 28. I believe now as I did in 2007 and 2008, that allowing inmates in segregation  
2 unlimited and unrecorded access to prison phones could be dangerous to other inmates,  
3 prison staff, and the public. Inmates could use the phones to discuss, plan, and coordinate  
4 ways to secret contraband into the prison or to commit crimes, intimidate potential witnesses,  
5 or torment and harass victims.

6 29. I honestly believe that the only way to ensure that all segregation inmates had a  
7 chance to call their legal counsel, while still protecting the safety and security of the prison  
8 population and the public was to require initial screening of all out-going phone calls and to  
9 verify legal calls were being properly placed.

10 30. I also believe even initial screening did not eliminate abuse as inmates could still  
11 misuse the phone system by having their friends or family identify themselves as a law office  
12 when answering the phone. If such deceit were employed, the call would neither be recorded  
13 nor monitored. Additionally, once legal counsel did answer the phone, they could always  
14 forward the call to others. Despite these flaws in initial monitoring, it was still the best way to  
15 deter and minimize abuses of the portable phones and to make sure all inmates got a chance  
16 to use the phone.

17 31. In denying Plaintiff Witherow's grievance complaining about the initial  
18 monitoring of his out-going legal calls, there was no indication that Defendant Lea Baker  
19 was listening to Plaintiff's legal calls beyond the point of initial identification.

20 32. I believe that the initial screening of legal calls was similar to the initial  
21 screening of legal mail. The initial scanning of legal mail checks for contraband and  
22 improper uses of the legal mail system, but there is no detailed review of the contents of  
23 anything marked as legal mail. Just as with legal mail, in 2007 and 2008 in Unit 13 at NSP,  
24 prison staff only monitored enough of an alleged legal call to ensure that the phone system  
25 was not being abused. This initial screening was the only and least invasive option to  
26 provide inmates with access to the phones and deter abuse.

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