

STATE OF INDIANA)
) SS:
ST. JOSEPH COUNTY)

IN THE ST. JOSEPH SUPERIOR COURT

CAUSE NO.: 71D06-1209-MI-00159

SOUTH BEND COMMON COUNCIL,

Plaintiff,

v.

SOUTH BEND CITY ADMINISTRATION,

Defendant,

TIM CORBETT, DAVE WELLS, STEVE
RICHMOND, BRIAN YOUNG, SANDY
YOUNG, SHELDON SCOTT, JAMES
TAYLOR, and SCOTT HANLEY,

Intervenor Plaintiffs,

v.

SOUTH BEND COMMON COUNCIL, and
SOUTH BEND CITY ADMINISTRATION,

Intervenor Defendants.

FILED

May 28, 2026

ST. JOSEPH CIRCUIT & SUPERIOR COURT
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FINDINGS OF FACT, CONCLUSIONS OF LAW, ORDER AND JUDGMENT

Trial was conducted in this matter on December 9, 2025. The parties were allowed to, and including, January 20, 2026, to submit proposed Findings of Fact, Conclusions of Law, and Judgments/Orders. Closing arguments took place in this matter on March 5, 2026.

After careful consideration of the evidence and testimony offered at trial; weighing the evidence and testimony; and applying applicable law; the court now enters the following Findings of Fact, Conclusions of Law, Order and Judgment.

I. PROCEDURAL BACKGROUND

The procedural history of this matter is complex and lengthy. For purposes of the examination herein, it is important to recognize the Opinion of the Indiana Court of Appeals regarding this case – *City of South Bend v. South Bend Common Council*, 192 N.E.2d 176 (Ind. Ct. App. 2022). This Opinion provides a thoroughgoing procedural history of these proceedings.

Most important, the Court of Appeals provided the following directive as to why remand was appropriate and necessary for development of a factual record in this case:

Section 4 - Remand is appropriate for development of a factual record and a final determination of the legality of all the interpled recordings.

As the trial court correctly acknowledged in its most recent order, thanks to the convoluted procedural path that this case has taken, "there has not been a [final] judicial determination of whether the Recordings were made legally or illegally." May 10, 2021 Order at 9. The trial court's factual findings in its interlocutory summary judgment orders are not binding, *Johnson*, 172 N.E.3d at 358, so a factual record must be developed on remand, including as to what DePaepe, Boykins, and others in the Department knew about the recording of Young's phone line and when they knew it, whether actually or constructively. The New Intervenors point out that in its second summary judgment order, the trial court essentially disregarded the parties' stipulation that DePaepe discovered that Young's line was being recorded sometime in January 2011, before she made the February 4 cassette tape. This stipulation is inconsistent with DePaepe's testimony in the district court trial, which ultimately came to naught, and the resolution of this discrepancy must be left to the trier of fact.

The New Intervenors do not specifically challenge the trial court's legal rulings on intent and consent and the application of the Indiana Wiretap Act in the first summary judgment order, so we summarily affirm them, except to the extent that they are contingent upon a final determination of the Discovery Date. As for the second summary judgment order regarding the Federal Wiretap Act, the New Intervenors do not specifically challenge the trial court's legal rulings on intent and consent and the applicability of the ordinary course of business exception, so we summarily affirm those as well, except to the extent that they are contingent upon a final determination of when Boykins learned that Young's line was being recorded; that date may be relevant to determining the legality of some of the interpled recordings that were not copied to cassette tape, the dates of which are currently unknown. At this point, we observe that the Original Intervenors have not yet had an opportunity to litigate any of the factual or legal issues raised in their complaint with respect to any of the interpled recordings.

In conclusion, despite this dispute having traversed numerous judicial proceedings in both state and federal courts for almost a decade, the fundamental question of whether any or all of these recordings constitute a violation of either state or federal wiretap laws has never been resolved. Unless the parties reach an amicable resolution as to the tapes sought by the Council as well as the tapes covered by both the Original Intervenors' and the New Intervenors' declaratory judgment actions, that question must be answered in order to resolve this case.

City of South Bend v. South Bend Common Council, 192 N.E.3d 176, 194-195 (Emphasis in original).

In addition to the above, the Appellate Court identified the following three (3) issues – one issue (1) setting forth an unresolved factual matter, and two (2) issues where courts presiding over these matters have potentially differed on legal interpretation. These three (3) issues, specifically, are:

(1) “The Intervenor’s assert that the Department ‘knew all along that line 6031 ... was being recorded in that the Chief of Police was annually provided with a list of all recorded lines to review or modify[,]’ Appellants’ Br. at 37, but they provide no citation to their ten-volume appendix to support this claim. Moreover, this assertion contradicts the New Intervenor’s assertion on summary judgment that ‘[n]o one was aware when Young took over his new office that his line was recorded.’” *City of South Bend*, 192 N.E.3d at 195 (Note 10);

(2) “In holding that the Federal Wiretap Act does not permit the disclosure of unintentional recordings, the trial court implicitly disagreed with the district court’s interpretation of *Dorfman*, 690 F.2d 1230, in Case 475.” *City of South Bend*, 192 N.E.3d at 195 (Note 7);

(3) “Judge Easterbrook also questioned the district court’s treatment of ‘the intent element [of the Federal Wiretap Act] as related to knowledge of whose voice would be heard rather than knowledge of which line would be recorded[,]’ noting that the court ‘did not explain why the statutory word ‘intentionally’ refers to the identities of the parties to a call.’” *City of South Bend*, 192 N.E. 3d at 184.

The factual record in this case has now been fully developed through the admission of extensive evidence along with witness testimony. The court has carefully considered the fully developed factual record; the arguments of counsel; and Indiana law. The court has resolved factual disputes based upon a careful review of the evidence. The Findings of Fact below represent the resolutions of those factual disputes. The fundamental question of whether any or all of the recordings constitute a violation of either state or federal wiretap law is addressed below.

II. FINDINGS OF FACT

A. THE VOICE LOGGER SYSTEM AND RECORDING ARCHITECTURE

1. The South Bend Police Department (the “Department”) operates well over one hundred (100) telephone lines in its daily operations. At issue in this matter are recordings made of a certain Department phone line and audio cassette tapes made of some of these recordings.
2. The Department maintained a Dynamic Instruments Reliance server-based analog recording system (the “Voice Logger”) that could record up to forty-eight (48) separate channels, each corresponding to one phone line, one base station, or one radio channel.
3. The Voice Logger was voice-activated and recorded any conversation on any telephone line hard-wired into the system twenty-four (24) hours a day, seven (7) days a week.

4. In order to record a particular line, it had to be hard-wired into the Voice Logger system. Lines not hard-wired into the system were not recorded.
5. The Department did not and could not record all of its telephone lines.

B. DISTINCTION BETWEEN GENERAL USE LINES AND INDIVIDUALLY ASSIGNED LINES

6. The Department took distinctly different approaches to recording general use lines (communications center, 911, and front desk lines) and individually assigned lines (lines assigned to specific officers).
7. All communications center lines, including 911 and ring-down lines, and all front desk lines were routinely and indiscriminately recorded.
8. The communications center training manual informed dispatchers that all calls from the dispatch floor were recorded and kept on file for three (3) years.
9. Front desk personnel were orally informed that their lines were subject to recording.
10. Both communications center and front desk personnel were aware that these lines were routinely and indiscriminately recorded.
11. General use lines were recorded to document 911 calls, perform dispatcher quality assurance, record responses, and investigate complaints.
12. The front desk and communications center lines were recorded by "position," not by individual user.

C. INDIVIDUALLY ASSIGNED LINES—LACK OF WRITTEN POLICY AND PROCEDURE

13. The Department maintained more than one hundred (100) individually assigned lines for officers in various offices or workstations.
14. Only a small number of these individually assigned lines were hard-wired into the Voice Logger system.
15. The Department never developed any written policies or procedures regarding which individually assigned lines would be recorded by the Voice Logger.
16. No written policies, procedures, or routines were developed by the Department concerning which individually assigned lines were connected or disconnected from the Voice Logger.
17. No written guidance or training was provided regarding recording practices for individually assigned lines.

18. No announcement was made regarding the protocol for recording individually assigned lines, and staff generally lacked accurate knowledge about which lines were recorded or how changes could be made.
19. In the absence of any policy or procedure for individually assigned lines, the Chief of Police retained discretion over which assigned lines would be recorded.
20. The Department Office of Professional Standards had a general order for the purpose of receiving, investigating, and processing complaints against employees of the Department. Paragraph IV(D), under the heading "EMPLOYEE RIGHTS" states: "Employees do not have a right to privacy for assigned equipment. The Department may enter and inspect any assigned equipment." Employees were required to sign off on the above as part of employment.
21. The above general order from the Office of Professional Standards is contrary to the longstanding Department practice by the acting Chief of Police to start and stop recording an officer's line only upon an officer's request and not to record any officer's assigned line without their knowledge. This practice of the Department, established by the Chiefs of Police, is that officers have an expectation of privacy with their own assigned line.
22. The above general order from the Office of Professional Standards also contradicts the practice of the Department providing a phone line in the break room where officers were told that their calls were not recorded.

**D. CHIEF FAUTZ'S EXPRESS INTENT: KNOWLEDGE AND CONSENT
REQUIRED**

23. Tom Fautz was Chief of Police from September 2002, through December 28, 2007.
24. In 2004, Chief Fautz communicated explicitly with Communications Director Karen DePaepe that command staff lines would only be recorded with the user's knowledge and consent.
25. Chief Fautz believed and communicated to Ms. DePaepe that officers had an expectation of privacy with their own assigned lines.
26. Chief Fautz told Ms. DePaepe that his approach to the phone lines of individual administrative officers would be to start and stop recording them only upon an officer's request and not to record anyone without their knowledge - based on his belief that officers have an expectation of privacy with their own assigned line.
27. There was no intent by Chief Fautz to establish a broadly applicable recording routine or to record all individual assigned, all administrative lines, or lines regardless of the user.
28. Individually assigned lines were only recorded by officer request or personal choice as a workplace tool.

E. THE 6031 LINE: RICK BISHOP'S VOLUNTARY REQUEST

- 29. Around 2002, Rick Bishop was assigned to phone line 6031.
- 30. In 2005, Officer Bishop requested that the 6031 line be recorded due to threatening calls to officers.
- 31. This request and its resulting recording of line 6031 were consistent with Chief Fautz's approach for allowing officers to choose to record their lines.
- 32. Rick Bishop's request for recording was explicit, knowing, and voluntary.
- 33. By approving Bishop's request, Chief Fautz did not intend to record the 6031 number regardless of the officer who subsequently used that line. Rick Bishop likewise did not expect that the 6031 number would always be recorded.

F. THE 6031 LINE SUCCESSION: RICHMOND'S TRANSFER AND YOUNG'S ASSIGNMENT

- 34. In January 2007, Rick Bishop became Division Chief of the Investigative Division and moved, with the 6031 line following him per his request.
- 35. In February 2010, then-Captain Steve Richmond was promoted to Division Chief of the Investigative Division and succeeded Rick Bishop.
- 36. Rick Bishop moved buildings and did not take the 6031 line with him. The line remained in the Division Chief's office.
- 37. Richmond requested his own phone number (ending in 7473) be moved to his new office, and Barbara Holleman, the Chief's Administrative Assistant, performed the transfer, switching 7473 to the Division Chief's office and 6031 to the Captain's Office.
- 38. In March 2010, Brian Young was promoted to Captain of the Investigative Division and occupied the office with the 6031 line.
- 39. Captain Young did not know the 6031 line was being recorded.
- 40. Captain Young had made no request or gave consent for the 6031 line to be recorded.
- 41. The line 6031 remained on the Voice Logger system by virtue of its physical phone number and the annual, intentional, decision of the Chief of Police to continue recording this line.

G. KNOWLEDGE OF RECORDED LINES

- 42. Beginning with Chief Fautz, the Department had a procedure where the Chief of Police was to be provided—and was provided—an annual list of all recorded lines by the Department Communications Director or the Administrative Assistant to the Chief of Police. (Holleman Deposition, Pages 14, 18, 19, and 20 – Trial Exhibit J; DePaepe Testimony, Pages 110-111 – Trial Exhibit B3).

43. In 2004, Chief Fautz communicated with the Communications Director that command staff lines would only be recorded with the user's knowledge and consent, and that officers had an expectation of privacy on their own lines. This communication was explicit and reflected departmental expectations.
44. Karen DePape maintained the list and the list was provided annually to the Chief of Police.
45. The Chief of Police was required to annually review the list and either approve continued recording or instruct that lines be removed from recording.
46. The line referred to as 6031 was on the list from the time it was being recorded at the request of Bishop and remained on the list thereafter.
47. The Department had continuous knowledge that line 6031 was being recorded. The recording of Line 6031 was an annual, intentional, decision of the acting Chief of Police. The recording of Line 6031 was, accordingly, never forgotten.
48. When Captain Darryl Boykins became Chief of Police in 2007, he made no changes to the Voice Logger's usage and implemented no new policies or practices.
49. The same lines recorded under Chief Fautz continued to be recorded by the decision of Chief Boykins.
50. During Chief Boykins' tenure, he never directed Karen DePaepe to record a particular officer.
51. Under Chief Boykins (and Chief Fautz), the Department maintained continuous knowledge and procedures to retain the knowledge that line 6031 was being recorded.

H. DISCOVERY OF THE UNAUTHORIZED RECORDING

52. Sometime between January and early February 2011, while troubleshooting the recording system, Ms. DePaepe identified that Captain Young's voice was heard on line 6031.
53. When Ms. DePaepe identified that Captain Young's voice was heard on line 6031, she knew line 6031 was an individually assigned line. She prepared the annual list of recorded lines for the Chief of Police to review which contained line 6031 since the inception of its recording. Ms. DePaepe also knew that Investigative Division Captains' lines were not routinely recorded and that no Chief of Police had directed that Captain Young's line be recorded. With that being said, the Department maintained actual knowledge that line 6031 was being recorded since 2005. What surprised Ms. DePaepe was that Young's voice was heard on line 6031.
54. Even though Ms. DePaepe identified that Young's voice was now on line 6031, and this line was now assigned to Young, there was no discovery in 2011 that line 6031 was recorded – this was known since 2005. The Chiefs of Police were annually provided a list of recorded lines and made a knowing and intentional decision to record line 6031. The Discovery Date is, therefore, not a date in 2011. Indeed, the term Discovery Date is a

misnomer now that the factual record in this matter has been developed and carefully considered. Any Discovery Date for the Department, including Ms. DePaepe, dates back to the original decision to record line 6031 in 2005. Any Discovery Date for Chief Boykins dates back to when he was first provided a list of recorded lines. This date is no later than 2008. The Department failed to take steps to make sure the individually assigned recorded lines were properly assigned to the officer that initially requested the recording of the individually assigned line. This does not lead to the result that line 6031 was discovered to be recorded in 2011 – it was known all along by the Department.

55. Ms. DePaepe heard something that troubled her as being potentially illegal as she continued to listen to the recordings of line 6031.
56. Ms. DePaepe did not immediately inform the Chief of Police of this discovery. She, instead, kept this discovery to herself.
57. Ms. DePaepe also did not inform Young, Richmond, or Internal Affairs of the recording.
58. In early March 2011, DePaepe eventually informed Chief Boykins of what she had heard on line 6031.
59. Rather than immediately ceasing the recording, Chief Boykins took no action to stop the recording of line 6031 and, instead, permitted recording to continue. There were cassette tapes made of some of the recordings that were troubling.
60. Chief Boykins did not notify Captain Young that his line was being recorded. Chief Boykins did not initiate an Internal Affairs investigation against Captain Young.
61. Chief Boykins' decision to continue recording was to gather evidence related to Ms. DePaepe's allegations about Young's conduct, thereby converting an unauthorized recording into an investigatory tool.
62. In October 2011, while Ms. DePaepe was on medical leave, Captain Phil Trent informed Captain Young that his line was recorded.
63. Young requested that the recording cease, but no action was taken.

I. NO SUBSEQUENT CONSENT—YOUNG AND OTHER OFFICERS

64. At no time did Captain Brian Young consent to the recording of his individually assigned phone line.
65. At no time did any Intervenor Officer consent to the recording of conversations on their respective assigned lines.
66. The Intervenor Officers' lack of consent was perpetuated by the absence of any policy, procedure, or notification system designed to inform officers which lines were being recorded.

J. THE CONTINUANCE UNDER CHIEF BOYKINS

67. When Captain Darryl Boykins became Chief of Police in 2007, he made no changes to the Voice Logger's usage and implemented no new policies or practices.
68. The same lines recorded under Chief Fautz continued to be recorded under Chief Boykins.
69. Prior to the events giving rise to this matter, the Department made no effort to establish written policies governing individual line recordings.
70. Despite receiving an annual list of the recorded lines, including line 6031, no Chief of Police or employee of the Department took steps to make sure the individually assigned recorded lines were properly assigned to the officer that initially requested the recording of their assigned line. Accordingly, line 6031 was recorded after it was assigned to Young in violation of the directive of the Chiefs of Police that individually assigned lines would only be recorded with officer knowledge and consent.
71. Chief Boykins believed the recordings at issue in this matter should not have occurred.

K. REASONABLE EXPECTATIONS OF PRIVACY

72. Officers in the Department received no formal training, advisement, or manual regarding which phone lines were recorded.
73. The Department had no written manual for communications supervisors or directors regarding individual line recording procedures.
74. Officers reasonably assumed that their own assigned phone lines were private and not subject to continuous recording.
75. The practice of the Chiefs of Police was to provide privacy to an Officer by not recording assigned phone lines without officer consent.
76. Additionally, the Department's failure to adopt written policies regarding individually assigned lines, and the Department's failure to notify officers, resulted in officers having a legitimate and reasonable expectation of privacy in their assigned telephone lines.
77. There was no written policy, unwritten practice, directive, or warrant authorizing the recording of Captain Young's assigned line (6031) during the period it was recorded while assigned to him.
78. After Rick Bishop ceased using line 6031, every call made or received on that line was recorded by the Voice Logger, and no sender or receiver other than Bishop had ever consented to being recorded.
79. All the Intervenor Officers, like other officers, had no notice that Captain Young's office line (6031) was recorded and reasonably believed their conversations with him on that line were private.

III. CONCLUSIONS OF LAW

A. DECLARATORY JUDGMENT JURISDICTION AND STANDARDS

Pursuant to Indiana Trial Rule 57 and Indiana Code § 34-14-1 et seq., this Court has jurisdiction to issue a declaratory judgment regarding the rights, status, and legal relations of the parties and the legality of the recordings at issue. A declaratory judgment is appropriate when the plaintiff has a reasonable apprehension that the defendant will commence a prosecution against the plaintiff or take other action against the plaintiff based on conduct engaged in by the plaintiff. The Intervenor Officers seek a declaration that the recordings of their telephone conversations were obtained in violation of Indiana and Federal Wiretap Law, and that such recordings are inadmissible and subject to destruction.

B. REVIEW OF LEGAL ISSUES

The Opinion of the Court of Appeals in this matter provides an analysis of the legal issues that must be decided. This is a proper starting point. The Appellate Court stated:

By way of background, we note that, broadly speaking, both the Federal Wiretap Act and the Indiana Wiretap Act prohibit and impose civil and criminal penalties for the unauthorized intentional interception, use, or disclosure of various communications. 18 U.S.C. §§ 2511, 2520; Ind. Code §§ 35-33.5-5-4,-5. Neither Act applies to intercepted communications in which at least one of the parties has consented to the interception. See 18 U.S.C. § 2511(2)(c) ("It shall not be unlawful under this chapter for a person acting under color of law to intercept a wire, oral, or electronic communication, where such person is a party to the communication or one of the parties to the communication has given prior consent to such interception."); Ind. Code § 35-31.5-2-176 ("'Interception', for purposes of IC 35-33.5, means the intentional recording or acquisition of the contents of an electronic communication by a person other than a sender or receiver of that communication, without the consent of the sender or receiver, by means of any instrument, device, or equipment under this article.").

One exception to the Federal Wiretap Act is the ordinary course of business exception, which "provides, in pertinent part, that 'an investigative or law enforcement officer in the ordinary course of his duties' may 'intercept a wire, oral, or electronic communication' through an 'electronic, mechanical, or other device.'" *Packer v. State*, 800 N.E.2d 574, 579 (Ind. Ct. App. 2003) (quoting 18 U.S.C. § 2510(5)(a)(ii)), trans. denied (2004). "But a communication is not viewed as having been recorded in the 'ordinary course' of an officer's duties if it is done to further a particular investigation or target a particular individual." *Narducci v. Vill. of Bellwood*, 444 F. Supp. 2d 924, 936 (N.D. Ill. 2006) (citing *Amati v. City of Woodstock*, 176 F.3d 952, 955-56 (7th Cir. 1999), cert. denied), aff'd sub nom. *Narducci v. Moore*, 572 F.3d 313 (7th Cir. 2009). "Instead, it must be part of a 'routine noninvestigative recording' of communications." *Id.* (quoting *Amati*, 176 F.3d at 955). "For example, the routine taping of all calls into and out of a police station or the taping of all prison inmates' calls has commonly been held to come within that

exception." *Id.* (citing *Amati*, 176 F.3d at 955, and *United States v. Feeke*s, 879 F.2d 1562, 1565-66 (7th Cir. 1989)).

City of South Bend v. South Bend Common Council, 192 N.E.3d 176, 181-182

C. VIOLATION OF THE INDIANA WIRETAP ACT

1. The Legal Standard

The Indiana Wiretap Act, codified at Indiana Code § 35-33.5-2-110 et seq., makes it unlawful for any person to intentionally intercept, endeavor to intercept, or procure any other person to intercept any wire, electronic, or oral communication. As is set forth above, under Indiana law, "interception" means the intentional recording or acquisition of the contents of an electronic communication by a person other than a sender or receiver of that communication, without the consent of the sender or receiver. Indiana Code § 35-31.5-2-176 defines "interception" to include one-party consent exception: if either a "sender or receiver" of a specific communication consents, the recording is not an "interception."

A plaintiff need only show that one of the three listed violations (the communication was intercepted, disclosed, or used) occurred to be entitled to a recovery. *Dommer v. Dommer*, 829 N.E.2d 125, 139-40 (Ind. Ct. App. 2005). The burden then shifts to the defendant to show that the communication was intercepted in accordance with Indiana law. Under Indiana's Wiretap Act, there are only two ways to legitimize the interception of a telephonic communication:

(1) consent (as included in the definition of "interception" at I.C. 35-31.5-2-176);

or

(2) compliance with the warrant procedure delineated in I.C. 35-33.5-2.

The burden of proof is on the government or the entity conducting the interception to demonstrate that either (1) a "sender or receiver" of a specific communication consented to the recording, or (2) a valid search warrant authorized the interception. *State v. Lombardo*, 738 N.E.2d 653 (Ind. 2000); *Dommer v. Dommer*, 829 N.E.2d 125 (Ind. Ct. App. 2005)

2. No Consent Was Given

The undisputed facts establish that Captain Brian Young and the other Intervenor Officers never consented to the recording of their assigned telephone lines. Young was unaware that his 6031 line was being recorded. This lack of knowledge is fatal to any claim of consent. No other Intervenor Officer consented to the recording of their respective assigned lines.

The evidence and testimony leads to the conclusion that consent cannot be implied from silence, inaction, continued employment, or the mere use of Department telephone equipment under the circumstances and context in which the Officers were placed. *See, e.g., Williams v. Poulos*, 11 F.3d 271, 281 (1st Cir. 1993) ("[I]mplied consent is 'consent in fact' which is inferred 'from surrounding circumstances indicating that the party knowingly agreed to the surveillance.'"). The Department's failure to establish written policies and its failure to notify

officers of recording procedures precludes any inference of implied or constructive consent. *See* Ind. Code § 35-31.5-2-176; *Dommer v. Dommer*, 829 N.E.2d 125, 139–40 (Ind. Ct. App. 2005) (civil claim lies where communication is intercepted without consent); *State v. Lombardo*, 738 N.E.2d 653, 659 (Ind. 2000) (government or entity must show interception was made with consent of at least one of the participants).

The exception for general use lines (communications center, 911, front desk lines) does not apply to individually assigned lines. Officers were informed about general use lines. No such notification occurred regarding individually assigned lines. There was no consent (implied, constructive, or actual) provided by the Intervenor Officers. Accordingly, the recordings of the Intervenor Officers' telephone conversations constitute unlawful interceptions under Indiana Law.

3. No Valid Warrant

There is no evidence or contention that any judicial officer issued a valid search warrant authorizing the recording of the Intervenor Officers' telephone lines. Chief Boykins' decision to continue recording Young's line for "investigatory purposes" does not constitute a valid warrant or judicial authorization and does not satisfy the warrant procedures set out in Ind. Code § 35-33.5-2.

4. Institutional Knowledge and Policy Failures

The evidence and testimony demonstrate that the Department maintained continual institutional knowledge of which lines were recorded through the lists reviewed annually by successive Chiefs of Police and maintained by Communications Director. Under ordinary principles of Indiana agency law, the Department is charged with the knowledge its employees acquired within the scope of their employment, including the Chiefs of Police and Communications Director's knowledge that line 6031 remained recorded since 2005. This is especially true for the Chiefs of Police who "maintain exclusive control" over the Department. *See*, Ind. Code § 36-8-3-3(g).

The Department's failure to disseminate that institutional knowledge to affected officers, or to implement structured policies for handling line reassignments, prevents the Department from relying on lack of notice at the individual level to claim the "ordinary course of business" exception applies or implied consent was provided by Officers. The absence of written policies governing individually assigned lines is a policy failure that undermines any claim of a settled, ordinary practice. There is no ordinary course of business practice to infer implied, actual, or constructive consent.

D. VIOLATION OF THE FEDERAL WIRETAP ACT

The Federal Wiretap Act provides that it is unlawful to intentionally intercept any wire communication:

- (1) Except as otherwise specifically provided in this chapter any person who—
 - (a) intentionally intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept, any wire, oral, or electronic communication;
 - (b) intentionally uses, endeavors to use, or procures any other person to use or endeavor to use any electronic, mechanical, or other device to intercept any oral communication when--
 - (i) such device is affixed to, or otherwise transmits a signal through, a wire, cable, or other like connection used in wire communication;

- (c) intentionally discloses, or endeavors to disclose, to any other person the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subsection; [or]
 - (d) intentionally uses, or endeavors to use, the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subsection;

shall be punished as provided in subsection (4) or shall be subject to suit as provided in subsection (5).

18 U.S.C. § 2511.

It is not a violation of the statute if the party whose communications are recorded gave prior consent. 18 U.S.C. § 2511 (2)(a)(iii)(d). Intentionality requires that a person's act must have been the product of her conscious objective rather than the product of a mistake or an accident. *United States v. Townsend*, 987 F.2d 927, 930 (2d Cir. 1993). Nor is an affirmative act, rather than an omission, required. It is enough to be aware that such interception is occurring and to fail to stop it. *Narducci v. Moore*, 444 F. Supp. 2d 924, 935-936 (N.D. Ill. 2006).

The Wiretap Act forbids the disclosure of “the contents of any wire, oral, or electronic communication [that was] obtained through the interception of a wire, oral, or electronic communication in violation of” the Act. 18 U.S.C. § 2511(c).

1. No One-Party Consent

The Intervenor Officers were parties to the conversations recorded on their assigned phone lines. No Intervenor Officer consented, expressly or implicitly as discussed above, to the recording of their conversations. Neither the sender nor the receiver of specific communications involving the Intervenor Officers consented to the recording. The recorded conversations therefore constitute illegal interceptions under the Federal Wiretap Act.

2. No Warrant

The undisputed testimony and evidence shows that no federal magistrate or judge issued a warrant authorizing the interception of the Intervenor Officers' telephone conversations. The administrative determination by Chief Boykins to continue recording does not constitute a warrant. The recordings therefore violate Federal law on independent grounds. *See* 18 U.S.C. § 2511(1);.

3. The "Ordinary Course of Business" Exception for Law Enforcement

Federal courts have recognized an ordinary course of business exception to the federal wiretap prohibition. One exception to the Federal Wiretap Act is the ordinary course of business exception, which "provides, in pertinent part, that 'an investigative or law enforcement officer in the ordinary course of his duties' may 'intercept a wire, oral, or electronic communication' through an 'electronic, mechanical, or other device.'" *Packer v. State*, 800 N.E.2d 574, 579 (Ind. Ct. App. 2003) (quoting 18 U.S.C. § 2510(5)(a)(ii)), trans. denied (2004).

The Court of Appeals Opinion in this matter also provides a framework for this analysis:

One exception to the Federal Wiretap Act is the ordinary course of business exception, which "provides, in pertinent part, that 'an investigative or law enforcement officer in the ordinary course of his duties' may 'intercept a wire, oral, or electronic communication' through an 'electronic, mechanical, or other device.'" *Packer v. State*, 800 N.E.2d 574, 579 (Ind. Ct. App. 2003) (quoting 18 U.S.C. § 2510(5)(a)(ii)), trans. denied (2004). "But a communication is not viewed as having been recorded in the 'ordinary course' of an officer's duties if it is done to further a particular investigation or target a particular individual." *Narducci v. Vill. of Bellwood*, 444 F. Supp. 2d 924, 936 (N.D. Ill. 2006) (citing *Amati v. City of Woodstock*, 176 F.3d 952, 955-56 (7th Cir. 1999), cert. denied), *aff'd sub nom. Narducci v. Moore*, 572 F.3d 313 (7th Cir. 2009). "Instead, it must be part of a 'routine noninvestigative recording' of communications." *Id.* (quoting *Amati*, 176 F.3d at 955). "For example, the routine taping of all calls into and out of a police station or the taping of all prison inmates' calls has commonly been held to come within that exception." *Id.* (citing *Amati*, 176 F.3d at 955, and *United States v. Feeke*, 879 F.2d 1562, 1565-66 (7th Cir. 1989)).

City of South Bend v. South Bend Common Council, 192 N.E.3d 176, 181-182.

With that being said, the court must apply the specifics facts of this case at bar to the law. It is true that certain police departments may routinely and indiscriminately record all phone activity in and out of the department. However, the South Bend Police Department, the only Department that matters in this case, never adopted a procedure, practice or routine of recording all phone activity in and out of the Department. The Department explicitly distinguished between general use lines (which were recorded as part of established routine) and individually assigned lines (which were discretionary and consent-based under the practice of the Chiefs of Police). The express directive of the Chiefs of Police was that individually assigned lines, like line 6031, would only be recorded with officer knowledge and consent.

Accordingly, the law enforcement exception, does not apply in this case. Unlike *Amati*, the South Bend Police Department did not maintain a practice of routinely and indiscriminately recording all phone activity in and out of the Department. Indeed, the Voice Logger system was incapable of recording the over 100 lines the Department had. As well, very few lines assigned to individual officers are recorded. An officer's assigned line was to be recorded only upon the officer's request and with the approval of the Chief of Police. The Department's practice set forth above in the Findings of Fact is markedly different from the routine noninvestigative use in *Amati*. Accordingly, the recordings of the Intervenor Officers' conversations were unlawful under the Federal Wiretap Act.

4. Suppressibility and Inadmissibility

Pursuant to 18 U.S.C. § 2515, any communication intercepted in violation of the Federal Wiretap Act cannot be received in evidence in any trial, hearing, or other proceeding. Any recordings made in violation of the Wiretap Act are *per se* inadmissible and must be suppressed. See 18 U.S.C. §§ 2515.

E. VIOLATION OF INDIANA CONSTITUTIONAL PRIVACY RIGHTS (ARTICLE 1, SECTION 11) AND VIOLATION OF FEDERAL CONSTITUTIONAL PRIVACY RIGHTS (FOURTH AMENDMENT)

The Intervenor Officers' claims under the Indiana Constitution and the Constitution of the United States of America are redundant, duplicative, and general. The Intervenor Officers' claims under the State and Federal Wiretap law specifically govern the Officers' claims. Accordingly, the court exercises judicial restraint and need not rule on these constitutional causes of action.

F. DECLARATION THAT RECORDINGS VIOLATE WIRETAP LAWS AND DECLINATION TO RULE ON CONSTITUTIONAL CLAIMS

The Court declares that the audio cassettes and recordings of conversations on the Intervenor Officers' assigned telephone lines were obtained in violation of the Indiana Wiretap Act.

The Court declares that the audio cassettes and recordings of conversations on the Intervenor Officers' assigned telephone lines were obtained in violation of the Federal Wiretap Act.

The Court declares that Intervenor Officers' cause of action pursuant to Indiana Constitution, Article 1, Section 11 and the Fourth Amendment to the United States Constitution are redundant, duplicative, and general. The Intervenor Officers' claims under the State and Federal Wiretap law specifically govern the Officers' claims. Accordingly, the court exercises judicial restraint and need not rule on these constitutional causes of action.

G. REMEDIES AND RELIEF

1. Tapes and Recordings Must Be Destroyed

As a matter of law and equity, recordings obtained in violation of the Indiana or Federal Wiretap Acts should not be retained or used, and destruction is an appropriate remedy under this Court's declaratory and injunctive powers.

The court orders that all audio cassettes, recordings, and any copies or derivative materials containing the conversations of the Intervenor Officers will be destroyed and not retained by the Department, the City, or the Common Council.

2. Future Disclosures Prohibited

Any future disclosure, use, or dissemination of the recordings would constitute an additional independent violation of the Wiretap Acts.

The court prohibits the Defendant City, Common Council, or any successor administration from disclosing, using, or referencing the recordings in any proceeding, investigation, or otherwise.

3. Attorneys' Fees and Costs

The Intervenor Officers are not entitled to recover attorneys' fees and costs. The Officers' request for attorneys' fees was abandoned and withdrawn by counsel at Closing Argument on March 5, 2026.

4. Declaratory Judgment in Favor of Intervenors

IT IS HEREBY DECLARED AND ADJUDGED that the recordings of the Intervenor Officers' telephone conversations were obtained unlawfully and in violation of state and federal wiretap law.

IT IS HEREBY DECLARED AND ADJUDGED that the Intervenor Officers are entitled to the suppression, destruction, and permanent disqualification of such recordings and tapes from any use or disclosure by the City of South Bend, the Common Council, or any other party.

5. Stay Pending Appeal

IT IS HEREBY ORDERED AND DECREED that all previous Orders in this case concerning the preservation and non-disclosure of all recordings remain in full force and effect. Accordingly, until all appeals have been exhausted, the Administration of the City of South Bend is hereby expressly ordered to preserve and protect all of the recordings (including all tapes made of any recordings), and not release, publish, erase, disseminate, or destroy all or any portion of the recordings (including all tapes), in all their forms.

IV. CONCLUSION

The recordings violate:

- The Indiana Wiretap Act, and
- The Federal Wiretap Act.

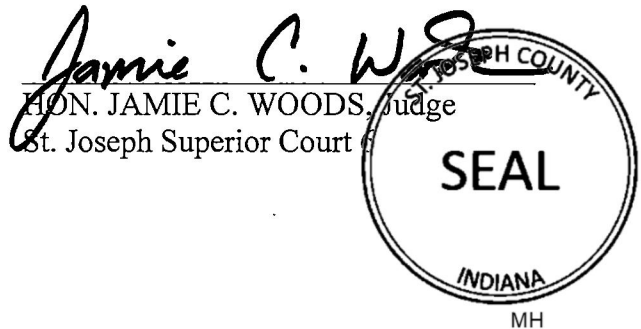
Accordingly, all recordings and cassette tapes must be suppressed, destroyed, and prohibited from any future use or disclosure.

The Intervenor Officers' causes of action pursuant to Indiana Constitution and the United States Constitution are redundant, duplicative, and general. Accordingly, the court need not rule on these claims and exercises judicial restraint on these claims.

The Intervenor Officers' request for Attorneys' Fees was abandoned and withdrawn.

For these reasons, judgment is entered in favor of the Intervenor Officers as set forth above, and the court declares that the recordings were obtained contrary to law and will be destroyed – **subject to the stay pending appeal set forth above.**

SO ORDERED, ADJUGDED, AND DECLARED this May 28th, 2026



Copies to:
All Parties