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# Appeals Court Stays Hearing On Tapings Of Attorney-Client Phone Calls In Leavenworth

By [DAN MARGOLIES \(/PEOPLE/DAN-MARGOLIES\)](#) · 7 HOURS AGO

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A federal appeals court has stayed a potentially explosive hearing – at least for the time being – aimed at determining whether federal prosecutors impermissibly obtained and used recordings of attorney-client phone calls.



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*A showdown between federal prosecutors and criminal defense attorneys was postponed until a federal appeals court can hear arguments on the matter.*

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The hearing was set to begin today in federal court in Kansas City, Kansas, but the U.S. Attorney's Office in Kansas filed an emergency motion to block it, arguing the court was poking into the internal affairs of a separate branch of government.

The 10th Circuit Court of Appeals on Wednesday night agreed to postpone the hearing until it can hear arguments on the merits of the government's position.

Criminal defense lawyers, led by the federal public defender's office, ([http://kcur.org/post/discovery-video-recordings-leavenworth-detention-center-](http://kcur.org/post/discovery-video-recordings-leavenworth-detention-center-spurs-outrage#stream/0)

[spurs-outrage#stream/0](http://kcur.org/post/discovery-video-recordings-leavenworth-detention-center-spurs-outrage#stream/0)) have accused federal prosecutors in Kansas City, Kansas, of obtaining recordings of meetings between inmates at the pretrial detention center in Leavenworth and their attorneys. They say that constitutes a clear abuse of power and a violation of the inmates' Sixth Amendment right to counsel.

U.S. District Judge Julie Robinson, who scheduled the postponed hearing, appointed a so-called special master – Cleveland attorney David Cohen (<https://www.specialmaster.law/>) – to look into the matter. Last May, she directed Cohen to determine whether prosecutors and government investigative agencies intentionally or unintentionally obtained and used attorney-client recordings.

Until then, the U.S. Attorney's Office had been cooperating with Cohen's investigation. But a few months ago it abruptly ceased cooperating (<http://kcur.org/post/us-attorney-s-office-kansas-no-longer-cooperating-attorney-client-tappings-probe#stream/0>), insisting no Sixth Amendment violations had occurred. That enraged the federal public defender (<http://kcur.org/post/public-defender-moves-have-federal-prosecutors-held-contempt-leavenworth-tappings-case#stream/0>), which, along with Cohen, took the highly unusual step of subpoenaing employees of the U.S. Attorney's Office to testify at the scheduled hearing.


The U.S. Attorney's Office moved to quash the subpoenas, but Robinson denied its motion, setting the stage for what was likely to be a highly charged and volatile hearing featuring criminal defense lawyers questioning federal prosecutors.


The 10th Circuit may ultimately decide to let the hearing go ahead, but in the meantime attorneys representing dozens of Leavenworth inmates have moved to dismiss their cases, citing constitutional violations. Those motions will now have to await a definitive determination whether prosecutors listened in on recordings of their conversations with their attorneys.


Dan Margolies is a senior reporter and editor for KCUR. You can reach him on Twitter @DanMargolies.


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