

THE TOPEKA CAPITAL-JOURNAL
cjonline.com

(/)



Posted February 14, 2017 03:17 pm - Updated February 14, 2017 06:09 pm

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Federal prison in Kansas recorded hundreds of attorney-inmate meetings, court investigator finds

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A privately-run federal prison in Kansas recorded video of hundreds of meetings between inmates and their attorneys, a court-led investigation has found after defense lawyers first raised concerns months ago over violations of client privilege. (Submitted)

A privately run federal prison in Kansas recorded video of hundreds of meetings between inmates and their attorneys, a court-led investigation has found after defense lawyers first raised concerns months ago about possible violations of client privilege.

The detention center in Leavenworth, operated by Corrections Corporation of America, possessed video recordings of all attorney-inmate meetings reviewed by the court investigator, who examined 30 randomly chosen visits that took place in spring 2016 and concluded hundreds were recorded. The extent of the recordings hasn't been previously disclosed.

Leavenworth CCA and the U.S. Attorney's Office in Kansas have been at the heart of a monthslong drama in the region's legal community over recordings of attorney-inmate meetings at the prison, as well as recordings of attorney-inmate phone calls. The ability of lawyers to meet with clients privately is a bedrock principle of the American legal system, and this fall, a federal judge named a special master to investigate.

Defense attorneys first raised concerns last summer over video recording of meetings with their clients. The U.S. Attorney's Office is prosecuting a handful of inmates, accusing them of engaging in an elaborate smuggling ring within the prison.

The inmates' attorneys put forward evidence that meetings had been recorded and have since provided evidence that inmate phone calls with attorneys also were recorded, even when attorneys had requested their numbers be blocked from recordings.

The special master, David Cohen, told Judge Julie Robinson last month that while reviewing all of the video from all rooms where attorney meetings took place would prove prohibitive, he reviewed a smaller sample of meetings to determine that every meeting that took place in a room with a camera was recorded.

The attorney visitor logs for the 12-week period last year where recordings occurred showed more than 700 attorney visits to rooms equipped with cameras, Cohen wrote in a filing.

"It appears all of these attorney-inmate meetings were recorded," Cohen said. "Of course, this analysis does not address whether any person ever viewed these recordings."

The U.S. Attorney's Office obtained the video and, while acknowledging missteps, has denied suggestions of impropriety. The U.S. Attorney's Office has said "no employee of the United States Attorney's Office or law enforcement officer" has viewed any recording provided by CCA.

"I made a very serious mistake ... but I want the court to know I did not intend to gain that footage," Assistant U.S. Attorney Erin Tomasic said in September.

Parallel to the video recordings, Cohen also has been investigating the extent of attorney-inmate phone recordings at the Leavenworth facility. In December, Cohen reported he had analyzed 48,333 telephone audio files from the facility and that a little more than 200 of those calls were made to a known attorney number.

In a follow-up report, Cohen said the more than 48,000 recorded phone calls came from about 1,400 numbers involving 58 inmates.

CCA uses the prison technology company Securus to operate its phone system. Securus has said Leavenworth CCA was responsible for designating attorney numbers as private, nonrecorded numbers. The company acknowledged allegations have been made in other places in the past regarding recording but said it rechecks its system each time and has always found it works properly.

Melody Brannon, the federal public defender for Kansas, said Cohen's findings exposed unanswered questions. She urges Robinson to expand the special master's authority.

"Specifically, the defense asks the special master to determine the policy and practice of the Kansas (U.S. Attorney's Office) in obtaining, reviewing and disseminating attorney-client communications, regardless of whether the USAO classified the communication as privileged or not," Brannon said in a January court filing.

She added the special master should also identify cases where the material was used and "mark the possible constitutional, statutory and ethical implications."

The U.S. Attorney's Office is fighting the public defender's request for additional power for the special master. Assistant U.S. Attorney Debra Barnett argues Brannon hasn't offered any evidence warranting an expanded investigation.

Barnett has said prosecutors didn't anticipate receiving recorded attorney-client calls from the facility during their investigations. Prosecutors had "no intent or desire" to obtain attorney-client calls, she has said, adding they weren't used by prosecutors.

“When discoveries of these calls occurred, appropriate steps were taken by the United States,” Barnett said in a January filing. “Despite everything that has occurred in this case, the United States has not sought to hide the discovery of these calls, and would not do so.”

Prosecutors also argue the phone recordings aren’t privileged because the facility warned inmates their calls may be recorded. By continuing their calls and not taking steps to have calls with attorneys exempt from surveillance, the inmates waived their right to keep the conversations from being monitored, they argue.

Depending on how far Robinson allows Cohen to go, the outcome of his investigation holds potentially significant consequences in ongoing cases. Only a handful of people have been charged in the Leavenworth smuggling investigation, but prosecutors indicate they believe upwards of 90 inmates may be involved, as well as a number of workers.

The current controversy is also drawing attention to Securus, which has faced scrutiny in other places over attorney-client recordings.

A Kansas and Missouri attorney filed a federal lawsuit against CCA and Securus in January. They argue Securus and CCA record confidential attorney-client communications, despite no legitimate reason to record.

Attorneys have sued Securus before. The company settled a 2014 lawsuit in Texas, agreeing to provide additional safeguards.

The settlement required implementation of a system to allow attorneys to register their phone numbers on a “do not record” list for calls with clients.



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