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Why were private attorney-client calls recorded? Now, Kansas inmates could go free

One of the nation's largest private prison operators has some serious explaining to do. What was it doing recording private conversation between attorneys and their incarcerated clients at the Leavenworth Detention Center? After all, attorney-client privilege is supposed to be one of the bedrock principles of America's legal system. Clients should be able to talk to their lawyers — confidentially — about their cases. That way, the attorney can provide the best possible legal representation. And here's a question for the U.S. attorney's office of Kansas: Why did some of its attorneys listen to those supposedly private conversations? Certainly the lawyers knew that such conversations were off-limits and that they had no business eavesdropping on them. But how often did it happen? Those questions are among many that need answering following what amounts to a shocking breach of constitutional norms. Between 2011 and 2013, the detention center's operator, CoreCivic, formerly known as Corrections Corporation of America, recorded at least 1,338 phone calls — and possibly thousands more — that detainees placed to their public defender attorneys, according to KCUR. And we know now that prosecutors listened to some of those recordings. What's at stake? A whole lot. Lawsuits have been filed. The possibility now exists that dozens of criminal cases impacted by the breach of confidentiality could be tossed out. Inmates at some of CoreCivic's 129 other facilities around the country may wonder if prison officials have taped their conversations. After all, Barry Pollack, president of the National Association of Criminal Defense Lawyers, has told *The Star* that the recording of attorney-client conversations is a widespread problem at private prisons, which are not bound by Federal Bureau of Prisons prohibitions against it. Then there's the lingering damage that this case leaves behind. How can defense attorneys gain the trust of their often destitute clients at a facility like the one in Leavenworth when those clients suspect that their conversations are being recorded? If all this raises questions about the efficacy of private prisons, it should. But that's an issue for another day. This entire episode stems from a contraband investigation at the Leavenworth facility. What's especially disconcerting is that even after numerous news stories about this issue and the appointment of a special master in October 2016 to look into this matter, a resolution has proven elusive. At one point, the U.S. attorney's office sent a letter to special master David Cohen refusing any further cooperation with his investigation. Then last month, an assistant U.S. attorney declined when asked 85 times to say whether federal prosecutors improperly listened in on attorney-client phone calls. In May, the new U.S. attorney for Kansas, Stephen McAllister, indicated his office is prepared to work out an agreement with the public defender's office. That's good news. Ironically, his announcement came midway through a hearing in which the public defender's office asked the judge to find McAllister's office in contempt after it ceased cooperating with the special master. CoreCivic declined comment. So did McAllister's office. But this situation desperately needs resolution, and tensions between the federal public defender's office and the U.S. attorney must be tempered. CoreCivic, which court records show has cooperated with this investigation, needs to ensure everyone that its operations safeguard those critical conversations between attorneys and their clients. The Sixth Amendment to the U.S. Constitution demands no less.