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William LANGTON and David Leblanc
v.

William HOGAN, Jr., Commissioner of Corrections, Commonwealth of Massachusetts; and Ronald Amaral, Superintendent; George Vose, Deputy Superintendent; Arthur Silva, Assistant Deputy Superintendent, all employees of the Southeast Correctional Center, Bridgewater; and McMannus, Senior Correctional Officer

Civ. A. No. 79-2167-Z. | Feb. 21, 1995.

Opinion

MEMORANDUM OF DECISION

ZOBEL, District Judge.

*1 In a complaint filed in 1979 plaintiffs objected to the Department of Corrections (the "Department") monitoring their phone calls. That lawsuit was settled with the entry of a consent judgment enjoining all officers, agents, servants and employees of the Department of Corrections from "intercepting, endeavoring to intercept, or procuring any other person to intercept, any wire communications by or to William Langton or David LeBlanc...."

Recently the Department installed a new telephone system and issued Regulations, 403 CMR §§ 842.00 et seq., pertaining to its use. Pursuant to the Regulations it assigns to each inmate a personal information number ("PIN") and it limits each to ten telephone numbers for family or friends, and five numbers for private attorneys. As a prerequisite to receiving a PIN the inmate must sign a form by which he consents "to the conditions and restrictions placed upon inmate telephone calls, including call monitoring, recording, and call detail." The system then automatically records inmates' calls to the ten family members' or friends' numbers.

Langton and LeBlanc complain that this new telephone arrangement violates the injunction and they filed a petition for contempt. In response, defendants moved for modification of the injunction pursuant to Rule 60(b) of the Federal Rules of Civil Procedure because, they say, changes in telephone technology require them to limit and monitor inmates' telephone calls. Specifically, the

development of conference calls, call forwarding, positive call acceptance, and calling cards have enabled inmates to engage in a range of criminal activity through the telephones, including harassment of victims, media, and law enforcement officials, fraudulent purchases of merchandise, illegal access to long distance service, and conducting criminal enterprises by means of telephones. The new Regulations are necessary to curb such conduct.

Defendants acknowledge that the injunction only protects Langton and LeBlanc and that they could be given personal access numbers that would allow them to make unlimited and unmonitored calls. However, defendants insist that the general prison population would then force plaintiffs to share their universal PINs by threats or violence and this would defeat the safeguards provided by the Regulations.

Rule 60(b) allows a court to modify a consent decree or permanent injunction when "(5) ... it is no longer equitable that the judgment should have prospective application"; or for "(6) any other reason justifying relief from the operation of the judgment...." The rule permits revision of a judgment when a party seeking modification establishes that "a significant change in circumstances warrants revision of the decree. If the moving party meets this standard, the court should consider whether the proposed modification is suitably tailored to the changed circumstance." *Rufo v. Inmates of Suffolk County Jail*, 112 S.Ct. 748, 760 (1992).

*2 The new telephone technology which gave rise to this most recent contretemps does represent a significant change from what was available at the time of the decree. Although portions of the affidavit of James R. Bender, the Assistant Deputy Commissioner of Secure Facilities for the Department, are pure speculation, most of his statements are based on his observations and experience. It is clear from the affidavit that the advances incorporated into the system do enable the inmates to engage in fraud, harassment and other nefarious, even criminal, activity and that some have been known to take full advantage of these opportunities. It is equally clear that the Department has a responsibility to prevent such abuses.

The likely abuses detailed in the affidavit result from the combination of a more versatile and responsive telephone system and the ability of inmates to make unlimited calls. It is thus appropriate for defendants to limit the number of calls inmates may make. Defendants explicitly do not charge plaintiffs with any past abuses of the telephones, and specifically do not anticipate any misuse by them in the future. Nevertheless, if plaintiffs were the only persons to retain full privileges, I am persuaded that a risk exists that other inmates may harm them to exploit their

Langton v. Hogan, Not Reported in F.Supp. (1995)

singular prerogative. The proposed modification of the injunction, to limit the number of calls, is thus reasonable.

Defendants do not, however, adequately explain how monitoring of plaintiffs' calls is either appropriate or necessary, given the lack of evidence of abuse by plaintiffs. The modification to the injunction defendants propose is, in this respect, broader than necessary to accommodate the changed circumstances.

Defendants' motion to modify the permanent injunction is

allowed to the extent that the Department of Corrections may limit plaintiffs' access in accordance with the Regulations, 403 CMR §§ 482.00 *et seq.* It is denied to the extent that defendants shall not monitor plaintiffs' calls and § 482.10 shall not apply to plaintiffs. Counsel shall submit a form of judgment reflecting the modification allowed.