

(email submission – October 5, 2022)

Good morning, (please excuse the typos)

I am LOD today and will be tied up with that duty for much of the meeting but will listen when I can and will attend after I complete my duties as LOD this afternoon.

I wanted to present you with my perspective on the issue as it pertains to monitoring of calls of those in custody from our jails and prisons.

We are looking at entirely backwards.

The issue isn't when should the State not be allowed to monitor calls and other electronic communications but rather:

- 1 When, if at all, should the State be allowed to monitor communications of an incarcerated individual?
- 2 Who should be allowed to monitor?
- 3 To what end or purpose?
- 4 Under what circumstances could it be shared outside of the incarcerating facility?
- 5 Under what circumstances could it be used by the State for purposes beyond facility safety and security?

I would answer these as follows

- 1: Any communications should not be monitored until the individual is either sentenced or has had their initial appearance in Court before a judge.
- 2: Absent a court order, only facility employees should be able to monitor or review communications
- 3: Absent a court order, the communications may only be used for facility safety and security purposes internally
- 4: Absent a court order, only to prevent the immediate loss of life of an individual
- 5: Absent a court order, none.

The State and Law Enforcement in Maine, and across the nation, talk about the need to monitor communications in order to investigate crimes. This is a ruse. The State and Law Enforcement enjoy free rein to invade the privacy of incarcerated individuals and to listen to their most private conversations all without meeting the prerequisites for a warrant.

I personally have had the prosecution use calls with family:

- As grounds to increase the client's bail when then believed the family was going to be able to post the current bail amount

- Disclose they listened to discussions about whether the client would accept a felony plea (against counsel's advice) if a misdemeanor was not offered
- Disclose they listened to conversations explaining that the case would be continued to seek a private mental health evaluation
- Disclose they listened to conversations where the client conveyed the attorney's opinion as to the strength of the State's case.
- and countless others

There is no reason that the State should have ever had access to these communications. Remember, the Prosecution would never be able to do this for someone who had the means to bail out. The Prosecution would never be able to get a condition of bail that allowed the State to tap all of the defendant's phone calls while out on bail. They should not have access to these communications for the poor.

Besides the privacy and Constitutional dimensions to this issue there is the mental and emotional toll on incarcerated individuals which have been shared by others with the Committee. If they listen to their attorney, incarcerated individuals are completely cut off from family and supports with respect to their legal issues. They would be advised not to discuss anything unless to their attorneys. Not just case related but not taking about substance abuse, not taking responsibility for their actions or acknowledging the effect of their actions on those they care about. They would be advised not to engage in any conversation about anything that could be used against them for bail or sentencing purposes. Not to share plans for the future (employment or education) in case it could somehow be used against them. "Your Honor, we oppose the reduction in bail as Mr. Smith has been speaking with family about possibly pursuing opportunities out of State" ... referring to job or education opportunities discussed with family.

The emotional and psychological toll, not to mention thwarting the beginnings of accepting responsibility, are immeasurable.

For all these reasons, and many I have not raised, I would urge Maine stop thinking about the way this issue is and start thinking about it, like the sign says, "the way life should be".

Thank you,

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