



Carceral Surveillance

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Surveillance is a part of nearly all aspects of our criminal legal system but is at its worst in prisons—potentially some of the most surveilled places on earth. Prisons make liberal use of surveillance technologies, from CCTV to more insidious forms of surveillance, like monitoring inmates' communications with the outside world. As Foucault and Bentham both knew, we can discern the future surveillance state we will endure, from watching what technologies get deployed in our prisons.

The Pandemic's Effect on Prisoner Privacy

The COVID-19 pandemic has accelerated the amount and types of surveillance technologies used in prisons, often under the guise of protecting inmates from the spread of COVID. Prisons have performed poorly at distancing, masking, testing and vaccinations for inmates. The mostly false notion early on in the pandemic that the virus spread via contaminated surfaces, and better-founded concerns about in-person visitors transmitting COVID, allowed vendors to develop and prisons to implement new ways to increase prison surveillance and diminish physical contact. Prison life during COVID is a whole new level of terrifying; and at the same time, prisons seem intent on increasing the humiliation, exploitation and isolation of prisoners.

What's Being Sold To Prison Authorities

Ordinary prison phone calls are already often ruinously expensive and are already often monitored. But new software systems take an already exploitative process, and render calls monitorable, rewindable, and searchable with audio keywords. It's a quantum leap in intrusiveness.

LEO Technologies' "Verus" product allows prisons to transcribe, listen to, and flag keywords in calls, using Amazon Web Services' AI technology. In January 2022, Restore The Fourth joined letters to DOJ's Civil Rights Division, Main DOJ and the New York State AG's office, highlighting the privacy issues with Verus and opposing its adoption.

Securus Technologies offers a variety of products, including voice and video calling. Originally, before

three lawsuits forced a change, their contracts required prisons to remove in-person visits, enabling Securus to charge inmates and their families \$20 for a 20-minute call when before they'd be able to see and touch their families directly. But in every state, having even \$25 saved up for phone calls makes you ineligible for free soap, shampoo and sanitary products; prisoners in a pandemic are being forced to choose between hygiene and family ties.

Securus's technology illegally records privileged calls between prisoners and their attorneys. Securus also collects biometric information, including voice prints, without saying how long they store this information for. Their privacy policy reserves the right to share information from calls with law enforcement and "certain third parties," "for use in connection with and in support of law enforcement activities."

Many prisons have been turning to digitizing prisoner mail in an attempt to crack down on alleged drug smuggling. However, surveys show that most drugs smuggled into prisons come not through visitors and mail, but through staff. Some prisons use "MailGuard," from SmartCommunications, to digitize all prison mail. Its website boasts "No contraband, no mess, no labor, and no cost." It says it cuts off the "last conduits of drugs and undocumented inmate communications with the outside world, eliminating contraband and streamlining inmate mail into a labor-free process." Another SmartCommunications product, "SmartTracker," allows those communicating with inmates to set up accounts to digitally track when their mail arrives. But those accounts also collect the sender's "email address, home address, IP address, GPS location, the names of devices used to access Smart Tracker, and any other accounts [senders] use."

Prisoners, in short, are to be allowed no "undocumented communications with the outside world", no physical visits, and no opportunity to touch anything or anyone from home. Prison libraries can be replaced by e-readers, which track what the prisoners are reading, charge them by the page, and can censor or delete a book prison authorities dislike at a moment's notice across the

whole prison system. Instead of physical mail, which costs money to process, prisoners can receive time-limited scans of their loved ones' letters, displayed on the cell wall – and that, of course, can also be monetized per page.

Now that prison authorities have the technological means to sever those bonds, and increase their own convenience and profits, there seems to be no place in the process to worry about the increased misery and isolation created by intense, digitized surveillance. It will be harder for kids and spouses to remain connected with prisoners, and in turn, prisoners will have fewer places to turn for support when they're released.

What Rights Do Prisoners Have?

Prisoners, even post-conviction, retain some privacy rights. Attorney-client communications should always be privileged; outgoing mail to your attorney, whether electronic or physical, should not be monitored or searched without a warrant; incoming mail can be searched only for contraband. But to fix this, somebody has to be able to file a grievance and have it heard, and somebody has to care about that grievance – a tall order, in the Kafkaesque world of prison grievances.

Prisoners cannot legally be intentionally deprived of their property, including letters. Prisoners have a right to receive books, magazines, and newspapers by mail, subject to some restrictions; they should not have to accept the unilateral replacement of these resources with digital and temporary substitutes.

Six states still respect human rights enough to allow prisoners to receive conjugal or extended family visits. In a new type of unit called "Restoring Promise" "...families are actively engaged in the lives of their incarcerated loved ones. In SC, families can bring sheets and comforters for their loved ones. They get to see their rooms and share meals. ... In other prisons, some visiting areas have designated play areas with toys for children."

Pre-conviction inmates in some parts of the country cannot be searched without reasonable suspicion.

What does Restore the Fourth recommend?

Prisons should recognize and protect the basic human need for in-person communication.

There should be no bans on in-person visits, no charges to prisoners for calls of any kind, no biometric requirements for making calls to or from prisoners, and no software-based monitoring of those calls. Attorney-client communications should be carefully segregated from other communications, and not searched without a warrant. Prisons should maintain well-equipped libraries of physical books, with e-readers being a free of charge extra.

If you're interested in combating carceral surveillance, you can get involved with Restore the Fourth [here](#).