

DISCLOSING A SONOMA COUNTY MAIN ADULT DETENTION FACILITY INMATE RECORDED TELEPHONE CONVERSATION

SUMMARY

In July 2011, the Grand Jury received two complaints, one from an inmate at the Sonoma County Main Adult Detention Facility (MADF), the other from a private citizen who had a relationship with that inmate. Both parties alleged that their civil rights had been violated when they learned that one of their MADF recorded telephone conversations had been disclosed to a non-authorized third party.

From our investigation, the Grand Jury learned that most inmate telephone conversations are recorded and monitored, the exception being constitutionally protected telephone calls (e.g., calls to/from inmates' attorneys, doctors, and clergy). Those calls are not recorded or monitored. Sheriff's Office detectives regularly monitor non-protected conversations with the intent of discovering possible future crimes (e.g., bringing contraband into the jail) or discovering possible evidence of the inmates' crimes. Parties using jailhouse phones for non-protected conversations are warned at the beginning of each call that their words are subject to being recorded and monitored. This information is also posted near the phones. See examples in the Appendix. Neither warning cautions the callers that their words can be disclosed to third parties.

The Grand Jury's investigation found that there is a possible violation of Penal Code Section 637. That section prohibits disclosing recorded telephone conversations to third parties, without the consent of those recorded. We also found that there is an absence of established policy or training within the Sheriff's Office (or MADF) regarding the disclosure of taped inmate telephone conversations with third parties. As such, the Grand Jury recommends that the Sheriff's Office consult with its counsel to initiate a policy regarding the disclosure of taped inmate telephone conversations. In addition, the Grand Jury recommends that the District Attorney conduct an investigation for possible criminal wrongdoing by the detective who disclosed this taped conversation with a third party private citizen.

APPROACH

In addition to interviewing both complainants, the Grand Jury interviewed several deputies in the Sheriff's Office. The Sheriff's Office also received the same two complaints that the Grand Jury received from the inmate and the private citizen. As a result, the Sheriff's Office conducted a Citizen's Complaint (CC) investigation. The Grand Jury reviewed that investigation and watched a video showing the third party listening to the taped telephone conversation in question. We also interviewed the Deputy District Attorney (DDA) involved in the inmate's case and a highly regarded, long-practicing, private practice defense attorney in Sonoma County. We were in communication with our counsel as well. Lastly, we visited the Sonoma County Public Law Library to seek information on the penal codes prohibiting the disclosure of recorded conversations.

BACKGROUND

Two virtually identical complaints were received by the Grand Jury. We combined the two complaints into one. The purpose of the Grand Jury's investigation was two-fold. First, we sought to confirm the details of the event in question. Second, we needed to find out if it was allowable to disclose a taped inmate telephone conversation to a third party.

The inmate and the private citizen had known each other for many years. They had hundreds of telephone conversations during the inmate's incarceration. The Grand Jury learned detectives in the Sheriff's Office reviewed at least 133 of them. It is common practice for detectives to listen to inmate telephone conversations for the purpose of discovering information about crimes already committed and crimes that inmates plan for the future (e.g., making arrangements to bring contraband into the jail, jail escapes, etc.).



The detective investigating the inmate's case was successful in gathering information from the inmate's telephone conversations. He was able to identify previously unknown victims of the inmate. The detective was also able to find out about the inmate's attempts to bring contraband into the jail via a weekender (i.e., a person who had been convicted of a crime, but is allowed to be out during the week for employment, and reports to the jail on the weekends).

The issue in question arose when the detective, in an effort to gain the trust of a potential witness in the inmate's pending case, played one of the recorded telephone conversations (between the complainants) for the potential witness. Grand Jurors viewed the video of this recorded telephone conversation being played for the potential witness. The disclosed telephone conversation did not relate to the case for which the inmate was incarcerated or to the inmate's attempts to bring contraband into the jail. The telephone conversation was a sexually explicit conversation between the inmate and the private citizen about their relationship. The potential witness was the girlfriend of the inmate who was not aware of her boyfriend's sexual relationship with this private citizen. The detective told us that he picked this particular telephone conversation out of the hundreds recorded because he wanted to show the potential witness that the inmate was manipulating her, and the detective wanted to gain her trust. The Grand Jury learned that this tape was played for the potential witness an hour before the inmate was to

appear in court to enter a plea. The potential witness did not attend this hearing.

In an attempt to clarify if it is legal to disclose recorded inmate telephone conversations to a third party (private citizen), we asked a number of key players about it during our interviews. This included the detective, who insisted that there is no expectation of privacy. He said he had been in frequent communication with the Deputy District Attorney (DDA) who was prosecuting this case. The detective told us he was informed by the DDA that it was not illegal to play a recorded inmate telephone conversation for a third party, further adding that it was rare to do so, but they do it when needed. In our interview with the DDA, she was unsure whether it was legal or not. The DDA also stated she had instructed the detective not to disclose this telephone conversation to the potential witness as it could give the appearance of witness tampering. As far as the legality of disclosing a recorded conversation to a third party, the DDA informed us that she advised the detective to seek counsel regarding this matter. We confirmed that the detective did not seek advice of counsel.

The Grand Jury sought advice of counsel. Counsel contacted Sheriff's Office staff who said that "...non-confidential calls are only shared with other law enforcement agencies and the DA, and only if they involve some type of possible criminal activity. The calls are not shared with anyone else." Counsel was also told that "Penal Code Section 633 authorizes the Sheriff to tape record inmate calls."

The Grand Jury spoke with Sheriff's Office deputies and a DDA. None of them were able to produce a relevant statute, nor could they refer to any written procedure that might shed light on this issue. Penal Code Section 633 does not address the issue of disclosing taped inmate calls. As a result, we sought the advice of a private practice local defense attorney. His opinion was that the law was breached when the detective disclosed this sexually explicit recorded telephone conversation between the inmate and a private citizen to the potential witness. The private attorney directed us to the California Privacy Law sections of the Penal Code. When we visited the Sonoma County Public Law Library, we were able to find Penal Code Section 637, which states:

Every person not a party to a telegraphic or telephonic communication who willfully discloses the contents of a telegraphic or telephonic message, or any part thereof, addressed to another person, without the permission of that person, unless directed to do so by the lawful order of a court, is punishable by imprisonment pursuant to subdivision (h) of Section 1170, or in a county jail not exceeding one year, or by fine not exceeding five thousand dollars (\$5,000), or by both that fine and imprisonment.

We also asked the private attorney for his opinion about the disclosing detective's statement that there is no expectation of privacy for inmates. Our witness replied:

Inmates have limited privacy rights, and they are advised that their phone calls will be monitored, but they do have a reasonable expectation of privacy that their conversations will not be disclosed to third parties for reasons other than (1) legitimate law enforcement concerns (e.g., to prevent the commission of a crime, dissuading a witness, etc.) or (2) legitimate jail security concerns (e.g., smuggling contraband into the facility, escape plans, etc.). The contents cannot be used for illegitimate or illegal purposes, such as blackmail, extortion, coercion, slander, etc.

The private attorney further opined that "both the letter and the spirit of this law is violated by the use made of the conversation in this case, i.e., to prejudice the witness against the defendant to coerce cooperation." In other words, "it served no legitimate purpose to share this recording with a potential witness."

DISCUSSION

Both of the complaints addressed to the Grand Jury asked us to investigate the possibility that the inmate's and private citizen's civil rights had been violated; specifically United States Constitution Bill of Rights Amendment One (Freedom of Religion, Press, Expression) and Amendment Four (Search and Seizure).

The detective who disclosed a recorded inmate telephone conversation to a private party without the consent of either of those involved in that telephone conversation may have violated Penal Code Section 637 and/or the complainants' civil rights.

In addition, the Grand Jury found that there appears to be no written Sheriff's Office policy regarding the disclosure of recorded inmate telephone conversations. Further, the Sheriff's Office deputies we interviewed did not know if, in fact, recorded inmate telephone conversations could be disclosed to third parties.

During the course of our investigation, several discrepancies and questionable actions were discovered. First, the Sheriff's Office's CC investigation exonerated the detective of any wrongdoing. Disclosing the recorded inmate telephone conversation in this instance appears to contradict the statement by Sheriff's Office staff that taped telephone conversations are only shared with other law enforcement agencies and the DA - and are not shared with anyone else. Second, following the Sheriff's inquiry, the detective was given a commendation for his work on this case. The DDA who had previously told him not to play the recorded conversation for the potential witness congratulated the detective on a job well done. The Grand Jury noted the commendation is dated the same date as that stamped "received" on the inmate's complaint. Finally, the DDA was mentioned in the CC investigation, yet the investigator never interviewed her and elected to base his conclusions solely on the statement of a single witness, the detective.

FINDINGS

- F1. Sheriff's Office personnel and District Attorney staff were unable to produce a relevant statute or a written policy when asked if the disclosure of recorded inmate telephone conversations to third parties was legal.
- F2. The citizen complaint (CC) investigation done by Sheriff's Office personnel in this case was lacking in that only the detective involved was interviewed.
- F3. There appears to be a lack of methodology (i.e., recorded documentation of discussions and results of discussions) when deputies seek advice from the deputy district attorneys.

RECOMMENDATIONS

- R1. The Sheriff's Office consult with its counsel regarding the legal ramifications of disclosing recorded inmate conversations to third parties.
- R2. The Sheriff's Office develop and implement a policy on disclosing recorded inmate telephone conversations to third parties (including informing the inmates - via inmate handbooks and postings near telephones - that telephone conversations could be recorded, monitored, AND disclosed, if legal to do so).
- R3. The District Attorney review Penal Code Section 637 with the District Attorney's staff and its counsel.

R4. The District Attorney review this case for possible criminal wrongdoing pursuant to Penal Code Section 637.

R5. Sheriff's Office personnel interview all parties involved in a CC.

REQUIRED RESPONSES

Pursuant to Penal Code Section 933.05, the Grand Jury requires responses from the following:

- Sonoma County Sheriff – F1, F2, F3, R1, R2, and R5
- Sonoma County District Attorney – F1, F3, R3, and R4

DISCLAIMER

This report was issued by the Grand Jury with the exception of one member of the jury who recused him/herself. This juror was excluded from all parts of the investigation, including interviews, deliberations, and the writing and acceptance of the report.

BIBLIOGRAPHY

- The Sheriff's Office Citizen's Complaint
- Video tapes of the potential witness listening to the recorded inmate telephone conversation
- The California Privacy Law sections of the Penal Code at the Sonoma County Public Law Library

APPENDIX

- Example of a pre-recorded MADF inmate telephone warning that calls may be recorded and monitored
- Notice posted at MADF telephones used by inmates

Reports issued by the Civil Grand Jury do not identify individuals interviewed. Penal Code Section 929 requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Civil Grand Jury.

Sample of Pre-recorded MADF Inmate Telephone Warning that Calls may be Recorded and Monitored

Operator: For English press one. (Spanish) de lo contrario prosiga en español y oprima el dos.

Operator: For collect call press zero, for debit call press one, to transfer debit card funds press three, for debit card rate information press eight.

Operator: Please enter your pin number now.

Operator: Please enter your debit card number now.

Operator: Your current balance is (balance given).

Operator: Please enter the area code and phone number you are calling now.

Operator: Please wait while your call is being processed.

(Phone call processed)

Recipient: Hello.

Operator to recipient only: Hello, this call is a free call from (name), an inmate at the Sonoma County Main Detention Facility.

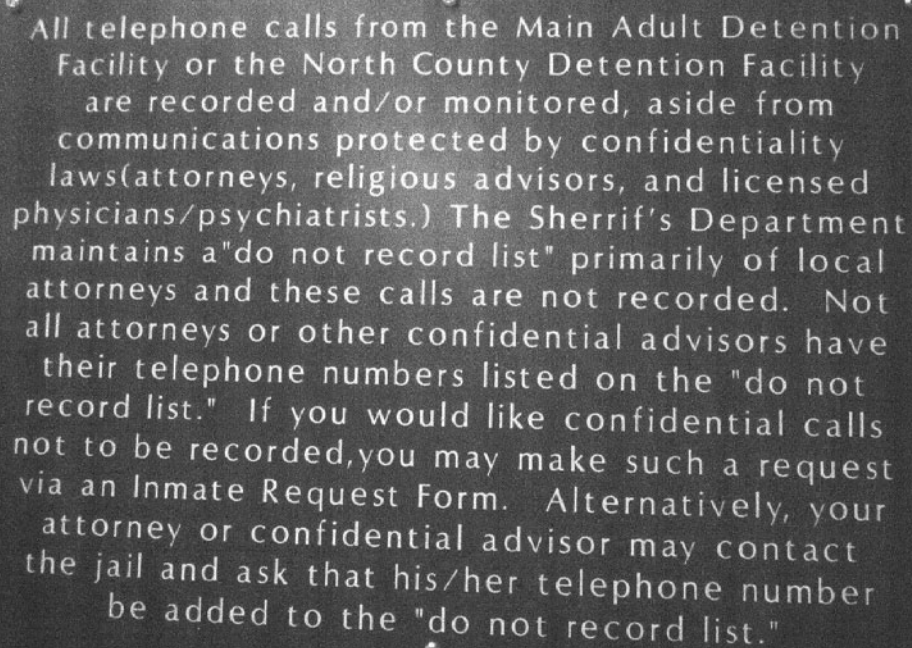
Operator: To accept this free call press zero, to refuse this free call hang up or press one.

Operator: This call is subject to monitoring and recording.

Operator: Three-way calling and custom calling features are not allowed.

Operator: Thank you for using PCS.

Notice Posted at MADF Telephones



All telephone calls from the Main Adult Detention Facility or the North County Detention Facility are recorded and/or monitored, aside from communications protected by confidentiality laws (attorneys, religious advisors, and licensed physicians/psychiatrists.) The Sheriff's Department maintains a "do not record list" primarily of local attorneys and these calls are not recorded. Not all attorneys or other confidential advisors have their telephone numbers listed on the "do not record list." If you would like confidential calls not to be recorded, you may make such a request via an Inmate Request Form. Alternatively, your attorney or confidential advisor may contact the jail and ask that his/her telephone number be added to the "do not record list."