

U.S. Department of Justice
Office of the Inspector General

U.S. Doc.

J 1.2:

C 75

Criminal Calls: A Review of the Bureau of Prisons' Management of Inmate Telephone Privileges

RECEIVED
Law Library

JAN 10 2000

University of Wisconsin
Madison, WI 53706



NON-DEP.

Michael R. Bromwich
Inspector General
August 1999

CRIMINAL CALLS: A REVIEW OF THE BUREAU OF PRISONS' MANAGEMENT OF INMATE TELEPHONE PRIVILEGES

EXECUTIVE SUMMARY

I. Introduction

Telephone privileges for Bureau of Prison (BOP) inmates have increased dramatically since the 1970s, when inmates were permitted one telephone call every three months and the call was placed by BOP staff. Now, most BOP inmates are allowed to make as many telephone calls as they are able to pay for or as many collect calls as people outside prison will accept. Even though all inmate calls are recorded, except prearranged calls between inmates and their attorneys, the BOP listens to few such calls – approximately 3.5 percent of all calls made by federal inmates. Consequently, prison officials have little control over any criminal activities discussed during those calls.

This special review conducted by the Office of the Inspector General (OIG) found that a significant number of federal inmates use prison telephones to commit serious crimes while incarcerated – including murder, drug trafficking, and fraud. Although the BOP has been aware of this problem for a long time, it has taken insufficient steps to address the abuse of prison telephones by inmates. The BOP has failed to respond adequately, partly because of the fear of litigation if it made changes to inmate telephone privileges, partly because of its misplaced reliance on new technology to provide solutions, and partly because of its apparent belief that inmates primarily use the telephone to maintain family relationships and ties to the community.

We believe that the fear of litigation should not prevent needed measures to combat inmate telephone abuse. We also conclude that no technology on the horizon will solve the problem of inmate telephone abuse without aggressive intervention by BOP officials. Moreover, while providing inmates access to telephones may further important correctional objectives, such as maintaining an inmate's ties to his family, the BOP's responsibilities extend

beyond this objective. Permitting inmates virtually unlimited telephone privileges comes at the cost of providing them the ability to commit serious criminal activity using prison telephones. As described in this report, we believe that the BOP needs to squarely address what appears to be widespread inmate abuse of prison telephones and take immediate and meaningful actions to correct the problem.

II. The OIG Review

At the outset of our review, we attempted to determine the scope of inmate abuse of prison telephones. We found that the BOP had a paucity of information on this issue. Neither BOP headquarters in Washington, D.C., nor BOP facilities keeps statistics of cases in which inmates are accused of committing crimes from prison using the telephone. Although the BOP maintains statistics on violations of prison regulations, this data is not sufficiently specific to identify which cases involved the use of telephones. Several BOP officials acknowledged to us that their limited statistics do not represent the overall number of telephone violations because many violations are resolved informally or not pursued administratively when criminal charges are brought.

Given the limited information available from the BOP, we attempted to independently identify the scope of inmate telephone abuse through a questionnaire we sent to all 94 United States Attorneys' Offices (USAOs). In the questionnaire, we asked the USAOs to identify any cases they prosecuted involving crimes committed by inmates using telephones in BOP facilities. We sent a similar questionnaire to the Federal Bureau of Investigation (FBI) and Drug Enforcement Administration (DEA) headquarters, for distribution to all FBI and DEA field offices, asking them to identify investigations they conducted involving federal inmates' use of prison telephones to commit crimes. In response to our requests, we received information from 72 USAOs, 16 FBI field offices, and 11 DEA field offices. Because these organizations do not index cases according to whether they took place in prison or involved the use of telephones, their responses to our questionnaires were based more on the recollection of the people who filled them out rather than on any comprehensive statistical review.

We also sent a questionnaire to the 66 BOP facilities that use the Inmate Telephone System (ITS), a telephone system that can store and analyze data

about inmate telephone calls better than the older telephone system used in 27 other BOP facilities. In this survey, we sought information about the volume of inmate calls and each institution's monitoring practices, staffing, equipment, and other policies related to the detection of telephone abuse by inmates.

We also visited nine BOP facilities to interview staff responsible for the institution's security and inmate telephone monitoring operations. These nine facilities represent institutions with different security levels and different physical layouts, two factors that affect the methods of monitoring the use of prison telephones. We visited four penitentiaries, three medium security facilities, and two low security institutions.

In addition, we examined several prosecutions of high-profile inmates who were convicted of committing crimes from inside a BOP facility. We examined these cases to determine what steps, if any, the BOP had taken to prevent these inmates from using the telephones to continue their criminal activities while they were incarcerated. We also interviewed one of these inmates, Rayful Edmond III, about his experience using prison telephones to commit crimes.

In total, we interviewed more than 70 BOP employees and approximately 20 other persons in the Department of Justice. We examined numerous documents, including BOP program statements on inmate telephone usage, the case law on inmate rights to telephone access, and the litigation and settlement agreement in a large class action lawsuit brought by inmates against BOP regarding the telephone system.

III. OIG Findings

A. Inmate Telephone Abuse

Our interviews, case examinations, data collection, and document review paint a troubling picture of the scope and seriousness of inmate use of prison telephones to engage in criminal activity.

From our interviews of law enforcement officials, we determined that inmate abuse of prison telephones appears to be widespread. For example, responses to our survey to the USAOs revealed 117 cases which those offices had prosecuted recently involving inmates' use of prison telephones to commit

criminal acts. Eleven of these cases involved prosecutions for murder or attempted murder arranged by inmates over prison telephones. In one case, an inmate used prison telephones to attempt to arrange the murder of two witnesses and a judge and to pay for the execution with illegal firearms. An additional ten inmates were prosecuted for schemes to threaten witnesses, and twelve were prosecuted for attempts to influence the testimony of witnesses. Twenty-five cases involved fraud schemes, many involving credit cards. In one case, an inmate directed by prison telephone a fraudulent employment matching service scheme that involved approximately \$1.6 million. Another inmate used prison telephones to swindle trucking companies out of more than \$100,000.

The 16 FBI field offices that responded to our questionnaire reported that they conducted 44 investigations between 1996 and 1998 involving prison inmates. Of these cases, 27 involved introduction of narcotics into a BOP institution; 11 involved drug conspiracies outside prison being conducted over the telephone by inmates from inside prison; 2 involved financial fraud; 1 involved bribery and obstruction of justice; and 3 were ongoing so details were not provided. However, these offices could not state definitively whether the cases involved the use of prison telephones because their records were not indexed in that fashion. Yet, we believe that these statistics, which were based on the memories of those responding to the questionnaire, probably undercount the total number of FBI cases involving inmates using prison telephones because the FBI does not index cases based on their location or whether an inmate was involved.

We also surveyed the DEA about any drug cases it has investigated involving the use of prison telephones by federal inmates. Eleven out of twenty-one DEA offices responded. They reported 12 cases at BOP facilities in which federal inmates had used prison telephones to commit crimes in the recent past. In none of these cases was the criminal activity detected by the BOP.

The head of the FBI office in Williamsport, Pennsylvania, which handles many FBI cases involving crimes in prison because of the office's proximity to a large number of BOP institutions, also believed that many inmates commit criminal activities over prison telephones. He told us that he believed that when large scale drug dealers serve time in the United States Penitentiary (USP) in Lewisburg, "all you do is change his address and his

phone number” by putting him in prison. He stated that drug dealers can conduct business as usual and may even feel a bit more secure behind bars than they do on the street. Another former Williamsport FBI agent told us that he believes few inmate calls from USP Lewisburg were legitimate calls to family and friends of inmates. Both FBI officials told us that in their view the BOP makes little effort to target inmate telephone calls for suspicious activity and to refer such evidence of criminal conduct to the FBI for investigation. A federal prosecutor from the Los Angeles USAO, who works mostly on prosecutions involving crime in prisons, similarly said that the use of prison telephones to commit crimes is rarely detected by the BOP.

These statements were supported by our interview of Rayful Edmond, a notorious Washington D.C. drug dealer who used prison telephones at USP Lewisburg to run a drug organization through contacts to Colombian cocaine cartel members who he met in prison. Edmond told the OIG that during his incarceration at USP Lewisburg, he talked on the telephone “all day long” and made arrangements for drug deals on the telephone almost every day, including participating in conference calls to Colombia. He estimated that he arranged to have drugs brought into prison 50 or 60 times. He claimed that almost half of Lewisburg inmates were involved in bringing drugs into the institution and that most of these drug deals were arranged over prison telephones. Edmond said that he had little concern about conducting drug deals on prison telephones because he knew that most calls were not being monitored. He said he also believed that even if he were caught abusing his telephone privileges, at worst he would receive a light punishment or a restriction of his privileges for a short period of time.

B. BOP's Efforts to Prevent Inmate Telephone Abuse

Based on our review, we concluded that the BOP's limited attempts to monitor inmate calls are virtually useless in preventing inmates from committing crimes using the telephones. For example, only 3.5 percent of the tens of thousands of calls made each day from BOP facilities are monitored. Our survey found that even though inmate telephones were available an average of 18 hours per day, the institutions had staff assigned to listen to telephone calls an average of only 14 hours on weekdays and 12 hours on weekends. Our survey also indicates that 16 of the 66 BOP institutions using ITS assign staff to listen to inmate telephone calls less than 50 percent of the

time that the telephones are operational. While all calls are recorded and can be listened to later, we found that this occurred rarely.

We found that a few inmates were using prison telephones excessively. We found that approximately 74 percent of the inmates used the telephone less than 300 minutes during a one-month period. However, 15 inmates at the nine institutions we visited spent over 66 hours each on the telephone during a one-month period, but none of the institutions had done anything about this excessive telephone use or was even aware of it.

During our visits to the nine institutions, we also saw that the BOP staff responsible for monitoring inmate telephone calls was not sufficiently trained on the telephone monitoring equipment or monitoring procedures. We did not talk to any telephone monitor who had received anything other than on-the-job training. We found no monitors who had received formal instruction on the best way to monitor; how to recognize suspicious activities or coded inmate language; which inmates should be monitored; or how to detect three-way calls, which are prohibited under BOP regulations. The telephone monitoring officer position is generally a rotating assignment, typically lasting 18 months. Several telephone monitors we interviewed said that by the time they learn how to effectively monitor inmate calls, their rotation was nearing its end. Moreover, the few permanent telephone monitors with whom we spoke did not use all of the tools that were available to them, such as the alert function on the ITS system that notifies the monitoring officer with an audible alarm whenever specified inmates were using the telephone. Several of the telephone monitors were not even aware that ITS had such a function.

Many BOP facilities make little or no effort to monitor telephone use by high-risk inmates. For example, in response to our survey, 27 percent of the institutions reported that they do not use the ITS alert function. At the nine institutions we visited, we found few proactive investigations of any high-risk inmates' use of the telephones. Several of the nine institutions made no attempt to even identify inmates who posed a high risk of using the telephones for criminal activity.

Correctional officers are sometimes assigned collateral duties of monitoring inmate calls. However, we found that they generally monitor inmate calls in a perfunctory way and do the minimum required by their post orders. For example, at USP Atlanta the "post orders" expect (but do not

require) certain correctional officers to listen to and file telephone monitoring reports for six or seven telephone calls each shift. That would result in 135 telephone monitoring reports each 24-hour period. Instead, we were told that between zero and 16 reports were filed each day at this institution. Many of the reports written by remote monitoring officers that we reviewed were virtually useless, containing short notations that were of little use in any monitoring effort.

We also found that the equipment used to monitor inmate calls was inadequate. For example, five of the nine telephones used for monitoring inmate calls at USP Atlanta were broken and no work orders had been submitted to repair the majority of them. The telephone monitor in USP Atlanta told us that he believed the correctional officers who were supposed to monitor calls were breaking the equipment so they would not have to monitor inmate calls. We contacted the monitor again several weeks after our visit and he informed us that the equipment had not yet been fixed.

Many inmate calls are in foreign languages. Yet, none of the facilities we visited had monitoring staff who were fluent in French, Russian, Chinese, or Arabic. Some BOP facilities do not have monitors who are fluent in Spanish, despite the fact that many facilities have a very significant Spanish-speaking population.

At the nine institutions we visited, we found that virtually no review is performed of the inmates' lists of approved numbers they may call to determine, for example, whether the lists include known criminals or past criminal confederates of the inmates. Inmates are permitted frequent changes to their telephone lists, and BOP staff normally approve the changes without review. None of the institutions we visited asked the Special Investigator Supervisor (SIS) office -- the part of the institution responsible for investigations of inmates -- to review inmate calling lists.

C. Case Studies

In addition to our general surveys and site visits, we examined several high-profile prosecutions of inmates who were convicted of conducting their crimes from inside a BOP facility. We looked at their cases to determine the BOP's actions in each case and what, if anything, it could have done differently to detect the criminal activity. These cases provide vivid examples

of the BOP's failure to adequately monitor inmate telephone use, especially those inmates who are likely to commit further crimes in prison.

Rayful Edmond was convicted in 1989 of running a large and sophisticated criminal enterprise that controlled much of the cocaine market in Washington, D.C. Soon after his arrival in USP Lewisburg, a correctional officer who was monitoring one of Edmond's telephone calls reported that he appeared to be engaging in a drug deal. The BOP reported this incident to the FBI and was told to keep a close watch on Edmond. Yet, we found no evidence that the BOP gave any additional information about Edmond's drug activities in prison to the FBI, or that the BOP sanctioned Edmond in any way for his use of prison telephones to continue his drug dealing.

In 1992, the FBI obtained information from an informant about Edmond's continued drug activities using prison telephones and shared that information with the BOP. But the BOP still took no action to discipline Edmond or restrict his calling privileges. Finally, in 1994, the FBI learned from another informant that Edmond was continuing to broker cocaine deals from prison. The FBI opened an investigation of Edmond and eventually confronted him with the evidence of his drug dealing. Edmond admitted that he had continued drug trafficking activities in prison.

Our review showed that despite significant evidence that Edmond was continuing to engage in criminal activities using prison telephones, the BOP took no measures to restrict his privileges and expended little effort to monitor his calls. Moreover, several other inmates associated with Edmond also used the prison telephones to commit crimes without any response by the BOP. For example, we reviewed the case of Jose Naranjo, who was convicted of conspiracy to distributed cocaine in 1979. While serving a 12-year sentence in Federal Correctional Institution (FCI) Otisville, he used the prison telephones to participate in a conspiracy to import cocaine from Colombia, South America to North Carolina. Even after his conviction for that crime, he continued to enjoy full telephone privileges. After being transferred to FCI Petersburg, he engaged in other conspiracies to distribute cocaine, and in 1995 was again convicted of drug distribution offenses. After Naranjo's sentencing, the federal prosecutor wrote to the BOP to urge it to prohibit Naranjo from using prison telephones. However, during our review in 1998, we were surprised to learn that Naranjo's telephone privileges had been restored and that the BOP was making no special effort to monitor his calls.

Another case we examined was even more troubling. Anthony Jones, a drug dealer in Baltimore, Maryland, was convicted of being a felon in possession of a firearm and was incarcerated at a BOP facility in Allenwood, Pennsylvania. While incarcerated, Jones became aware of an ongoing grand jury investigation into his drug activities. He used the prison telephones to order his associates outside prison to murder two witnesses he suspected had testified against him. One of the witnesses was killed and the other was shot several times. As a result, in May 1998 Jones was convicted of murder and attempted murder charges, and he received a sentence of life imprisonment without parole. Yet, even after this conviction, Jones retained full telephone privileges and the BOP did not take any measures to monitor his telephone calls. Only after the OIG questioned the BOP about Jones' telephone access did it move to restrict his telephone privileges in July 1998.

The case of Oreste Abbamonte provided another example of the BOP's failure to monitor or restrict inmate telephone abuse. Abbamonte had a long history of convictions for drug distribution. In 1986, while imprisoned in FCI Lewisburg, he was convicted for using prison telephones to orchestrate the distribution of multiple kilograms of heroin. After this conviction, the USAO for the Southern District of New York wrote a letter to the Director of the BOP stating that Abbamonte's access to prison telephones had enabled him to commit drug crimes while incarcerated and expressing the hope that narcotics distributors would have special restrictions placed on their use of prison telephones. When Abbamonte was sentenced, the court specifically recommended that Abbamonte be confined to the BOP's highest security facility and that he have limited telephone privileges.

Despite these recommendations, the BOP placed no restrictions on Abbamonte's telephone use, and his drug trafficking using prison telephones continued. While in a BOP facility in Leavenworth, Abbamonte again used prison telephones to conspire to purchase cocaine, and he was convicted in 1992 for this offense.

When we reviewed Abbamonte's BOP files in 1998, we were surprised to find that Abbamonte's telephone privileges were not limited in any way, despite the USAO's letter, the court's specific request, and his repeated use of the prison telephones to commit crimes. He has never been charged with any violations of BOP regulations for using prison telephones for his continuing

criminal activities, and he was not even placed on the special monitoring list maintained by the prison's SIS office.

Finally, we reviewed BOP case files from four randomly selected inmates whose convictions received significant public attention and who appeared to have the resources to continue criminal activities while incarcerated. We reviewed these files to determine what steps, if any, the BOP took to prevent these inmates from using the telephones to continue their criminal activities while in BOP custody. In two of the four cases, we found that the BOP was properly monitoring the inmates' telephone calls, but in the two others cases the BOP was not. In one of these cases, the prosecutor had even made a specific request for such monitoring to occur and the warden had provided assurances that it would. Despite these representations, no monitoring of this inmate's calls was occurring.

IV. BOP's Corrective Efforts

Our review found that the BOP has taken only limited and insufficient corrective efforts to address the serious problem of inmate telephone abuse for a variety of reasons – such as a lack of resources, the press of other issues, and the belief that a settlement with inmates in a class action lawsuit about inmate access to telephones imposes restrictions.

Three working groups have reviewed inmate telephone use in the past few years – a BOP working group convened in August 1996, a Department of Justice working group convened in the fall of 1996, and another BOP working group in 1997. However, changes as a result of these working groups have been extremely limited. For example, the BOP has attempted to implement only one significant change in its telephone policy – an increase in the severity of the sanction for inmate telephone abuse. This revision has yet to take effect because the rule-making process required to enact the new policy is still ongoing.

Several BOP officials told us they believed that a new generation of telephone equipment planned for installation in all BOP institutions during the next two years will detect many cases of inmate telephone abuse. However, we found that the BOP's postponement of needed reforms until this new telephone system is operational is not justified. No new technology on the horizon – including the BOP's new inmate telephone system – will solve the

problem of inmate telephone abuse without aggressive intervention by BOP officials. Implementation of a new inmate telephone system is not the cure all that some BOP officials apparently are counting on. In fact, given the lack of understanding and failure to use some of the security features that already exist in the BOP telephone system, the new system may have little impact on BOP's efforts to detect telephone abuse by inmates.

V. OIG Recommendations

We believe that unless the BOP places meaningful restrictions on inmate telephone privileges, steps up its monitoring of selected inmate calls, and disciplines telephone abusers consistently, no significant change in the level and seriousness of inmate telephone abuse will occur.

Based on our review, we recommend that the BOP take steps to curb prison telephone abuse in four ways. First, the BOP must increase the percentage of inmate telephone calls it monitors if it expects to make any headway on the problem of inmate telephone abuse. While additional resources will be helpful in this regard, because of the high volume of inmate calls the only realistic solution is to reduce the number of calls so that BOP staff assigned to this task can monitor a greater percentage of calls. Towards this end, we make various recommendations, including that the BOP impose limits on all inmates' telephone privileges, set a significantly higher goal for monitoring inmate calls and then calculate the resources needed to meet this goal, have telephone monitors on duty at all times that prison telephones are available to inmates, do a better job identifying inmates with a high probability of abusing their telephone privileges, and institute a plan to monitor these inmates calls proactively.

Second, the BOP must increase and more consistently discipline telephone abusers. During our review, we found various cases in which inmates retained full telephone privileges even after they were convicted of a crime involving use of prison telephones. We recommend that the BOP develop and enforce policies to ensure that administrative action is quickly taken against inmates who abuse their telephone privileges, particularly those inmates convicted of crimes stemming from their use of prison telephones. The BOP also should develop and implement policies that mandate restriction of telephone privileges as the preferred sanction for inmate telephone abuse. Subsequent violations of BOP telephone policies should result in increased

sanctions that include loss of all telephone privileges. Inmates who commit crimes using prison telephones also should have their privileges revoked. The BOP also should consider designating certain institutions or wings of institutions as housing units for inmates whose telephone privileges have been revoked or restricted. This would alleviate the problem of inmates without telephone privileges getting other inmates to make calls for them.

Third, the BOP should restrict telephone privileges proactively for inmates who have a history of telephone abuse or a likelihood of abuse. This would mean that some inmates simply would not have telephone privileges because of their previous behavior using the telephones in prison. As an additional safeguard to deter potential criminal conduct, the Department of Justice should educate prosecutors about the availability of court orders restricting an inmate's telephone privileges in racketeering and drug cases. The Department also should consider seeking legislation to permit similar court orders in all cases in which the government can make a showing that the defendant should not be entitled to telephone privileges because of a prior history of telephone abuse. Moreover, the Department should emphasize to USAOs the need to inform BOP of inmates who pose special risks of committing serious crimes while incarcerated, as outlined in a letter from the Attorney General on May 7, 1998. As of the fall of 1998, the BOP had received only two such notifications. These notifications are critical because they fill gaps in BOP's knowledge about the inmate's history and put the BOP on notice of the risk posed by certain inmates. In light of the BOP's failure to properly monitor high-risk inmates after either court order or notice from prosecutors, we recommend that a reporting system be established to assure USAOs that the BOP has taken proper measures after such a notification.

Fourth, the BOP should emphasize the responsibility of its officers to detect and deter crimes by inmates using BOP phones. Our review found that SIS officers at BOP institutions spend far too little time detecting and deterring criminal conduct committed by inmates using prison telephones. The SIS's mission should be expanded to include a more substantial focus on the detection of crimes by inmates in BOP custody. This could be accomplished through additional training for SIS staff, greater communication between the SIS and other law enforcement agencies, and better intelligence-gathering on inmates. In addition, the BOP should revise its procedures to require SIS staff to ensure that the numbers listed on an inmate's telephone calling list are investigated prior to approval of those lists, especially with high-risk inmates.

In sum, permitting inmates access to prison telephones and protecting the public against crimes committed with prison telephones present a complex balancing of interests. Our review highlighted the problem of inmate abuse of prison telephones, and the serious crimes that are committed by inmates using the telephones. Because of the BOP's generally ineffective efforts to monitor calls, prevent inmate telephone abuse, or sanction inmates who abuse their telephone privileges, we believe that the BOP's current policy of affording unlimited telephone access to the vast majority of its inmates requires serious examination and substantial revision.

Michael R. Bromwich
Inspector General

TABLE OF CONTENTS

EXECUTIVE SUMMARY

CHAPTER ONE: INTRODUCTION	1
I. Overview	1
II. The OIG Review	3
III. Organization of Report	6
CHAPTER TWO: FEDERAL INMATE ACCESS TO TELEPHONES	8
I. Background on the BOP	8
II. Background on Inmate Telephone Use in the BOP	10
A. The BOP Philosophy on Inmate Use of Telephones	10
B. History of Inmate Access to Telephones	12
C. Inmate Telephone Abuse and the BOP 's Early Responses	12
D. The Development of the Inmate Telephone System	16
1. Features and Installation of the System	16
2. <u>Washington v. Reno</u>	18
3. Current Telephone Systems in BOP Facilities	20
4. ITS II	20
5. Inmate Telephone Use in State Prisons	21
CHAPTER THREE: LEGAL AND REGULATORY BACKGROUND	22
I. BOP Policy and Practice	23
II. Prohibited Acts	25
III. SIS Role	27
CHAPTER FOUR: OIG REVIEW OF INMATE TELEPHONE ABUSE	28
I. Determining the Scope of Inmate Telephone Abuse	28
II. OIG Data Collection	32
III. OIG Field Visits and Survey of ITS Institutions	34
A. Current Calling Patterns	34
B. Current BOP Monitoring Efforts	35
C. The SIS Office	39

D. Disciplinary Sanctions for Telephone Abuse	40
IV. FBI Information	41
A. Williamsport, Pennsylvania FBI Office.....	42
B. Survey of FBI Field Offices.....	43
V. DEA Information	44
VI. Surveys of U.S. Attorneys' Offices	45
A. 1995 USAO Survey	45
B. OIG 1998 Survey of USAOs	45

CHAPTER FIVE: OIG CASE STUDIES OF INMATE TELEPHONE ABUSE

I. Rayful Edmond III and Related Cases	48
A. Rayful Edmond III	48
1. FBI Opens Investigation of Edmond	50
2. The OIG interview of Edmond	52
B. Jose Naranjo	55
C. Freddy Aguilera and Nelson Garcia	58
D. OIG Conclusions About Case Studies of Edmond, Naranjo, Aguilera, and Garcia	61
II. Anthony Jones.....	63
A. Background	63
B. Facts of Jones' case.....	64
C. OIG's Conclusions regarding BOP's handling of Jones's case	69
III. Oreste Abbamonte	70
IV. OIG Review of Selected Inmate Files	73

CHAPTER SIX: RECENT BOP CORRECTIVE EFFORTS	77
I. 1996 BOP Working Group	77
II. The Director's Letter to Wardens and Executive Staff.....	78
III. Attorney General's Working Group.....	79
IV. Wardens' Working Group	81
A. Working Group Recommendations	82
B. Review by Federal Programs Branch Attorneys	84
C. Review by BOP Office of General Counsel	84

D. Decision on Working Group's Recommendations	85
V. BOP's National Strategic Planning Objective 5.11	86
VI. Congressional Change in Trust Fund Language.....	90
CHAPTER SEVEN: ANALYSIS.....	93
I. Cap on Inmate Calls.....	93
II. BOP's Failure to Devote Sufficient Resources to the Problem.....	97
A. Training	97
B. Insufficient Staffing	98
III. Restriction of Telephone Privileges as a Matter of Classification	100
IV. Increase in Disciplinary Sanctions for Inmate Telephone Abuse .	102
V. Use of Administrative Punishments	103
VI. Other Possible Methods of Restricting Privileges.....	103
VII. BOP Penological Interests in Providing Telephone Access.....	106
VIII. BOP's Misplaced Reliance on New Technology	108
A. Small Improvements with ITS II	108
B. Failure to Coordinate within BOP on the Development and Implementation of ITS II	110
C. New Telephone Technology	112
1. Speaker Identification	113
2. Speech Recognition.....	113
CHAPTER EIGHT: RECOMMENDATIONS	115
I. Monitoring of Inmate Telephone Calls.....	116
II. Discipline	117
III. Proactive Restrictions of Privileges.....	118
IV. Role of SIS Officer	119
CHAPTER NINE: CONCLUSION.....	120

APPENDICES

Appendix 1: Washington v. Reno

Appendix 2: ITS II Features

Appendix 3: Information from the FBI: Crimes by Inmates Using Prison
Telephones

Appendix 4: Information from the DEA: Crimes by Inmates Using
Prison Telephones

Appendix 5: Legal Analysis: Restrictions on Correspondence as a Matter
of Classification

TABLES

Table 1: Inmate Telephone Activity and BOP Practices.

Table 2: Federal Prosecutions of Cases Involving Inmates Using the
Telephone to Facilitate a Crime, Survey by D.C. USAO, 1995.

Table 3: Federal Prosecutions of Cases Involving Inmates Using the
Telephone to Facilitate a Crime, Survey by DOJ OIG, 1998.

CHAPTER ONE

INTRODUCTION

I. Overview

Telephone privileges for the Bureau of Prisons' (BOP) approximately 113,000 federal inmates have increased dramatically since the 1970s, when inmates were permitted one phone call every three months and the call was placed by BOP staff. Today, most inmates in the federal prison system are free to make as many telephone calls as they are able to pay for or as many collect calls as people outside prison will accept. Even though all inmate calls are recorded, except prearranged calls between inmates and their attorneys, the BOP listens to less than four percent of calls,¹ citing the lack of staff to monitor more calls. Consequently, prison officials have little control over inmate calls or any criminal activities discussed during those calls.

This special review conducted by the Office of the Inspector General (OIG) seeks to identify the extent of telephone abuse by BOP inmates, assess the BOP's response to the problem, and offer recommendations to address this serious issue. Our review found that a significant number of federal inmates use prison telephones to commit serious crimes while incarcerated – including murder, drug trafficking, and fraud. We conclude that despite BOP management's awareness of this problem, it has taken insufficient steps to address it.

The BOP provides inmates access to telephones on the grounds that it furthers important correctional objectives, such as maintaining an inmate's ties to his family. However, BOP's responsibilities extend beyond those objectives, and the virtually unlimited telephone access comes at the cost of allowing inmates the ability to commit serious criminal activity using prison telephones. Often those crimes extend beyond the prison. We believe that the

¹ Our survey of all institutions using the BOP Inmate Telephone System found that the BOP monitors approximately 2.9% of live calls by inmates. We also found that the BOP reviews an additional .7% of calls after they have been recorded. These numbers are based on estimates provided by those responsible for monitoring at each institution, and not on monitoring statistics. Such statistics are not maintained by the BOP.

BOP needs to squarely address what appears to be widespread inmate abuse of prison telephones and take immediate and meaningful actions to correct this problem.

We found that the limited action the BOP has taken in recent years to address this problem came only after the extensive publicity given to cases involving inmates using prison telephones to run large-scale drug organizations. The most notorious recent case of inmate telephone abuse involved Rayful Edmond III, a convicted drug dealer from Washington, D.C., who used contacts he made with Colombian drug dealers while serving two life sentences in the U.S. Penitentiary (USP) at Lewisburg, Pennsylvania, to expand his drug trafficking operation while in prison. Federal prosecutors initially referred evidence of Edmond's use of prison telephones to commit additional crimes to the BOP to handle as an administrative matter. However, BOP officials took no action to limit Edmond's use of prison telephones. Prosecutors eventually gathered enough evidence to charge Edmond with additional drug trafficking crimes. As a result, Edmond agreed to cooperate with the government in developing criminal cases against four other inmates who were using BOP telephones to operate large drug trafficking organizations outside prison. In 1996, Edmond pleaded guilty to drug charges stemming from his use of prison telephones and received an additional 30-year sentence. In an interview with the OIG, Edmond said he had spent several hours every day on the telephone, occasionally using two lines simultaneously to conduct his drug business.

After a 1996 BOP review of inmate telephone abuse in the aftermath of the Edmond case, the BOP approved only one significant change in its telephone policy – an increase in the severity of the sanction for inmate telephone abuse. This revision has yet to take effect because the rule-making process required to enact the new policy is still ongoing.

The Attorney General and Deputy Attorney General also have expressed an interest in this issue and have pressed the BOP to pursue administrative, legislative, and technological avenues to ameliorate the problem. Our review shows that for a variety of reasons – a lack of resources, the press of other issues, the belief that a settlement with inmates in a class action lawsuit about inmate access to telephones imposes restrictions in this area – the BOP's limited corrective efforts have been insufficient to address this serious issue.

Several BOP officials with whom we spoke also have expressed the belief that a new generation of telephone equipment planned for installation in all BOP institutions during the next two years will prevent many cases of inmate telephone abuse. As will be discussed below, however, BOP's postponement of needed reforms until this new telephone system is operational is not justified. No new technology on the horizon – including the BOP's new inmate telephone system – will solve the problem of inmate telephone abuse without aggressive intervention by BOP officials. As we describe below, we believe that unless the BOP places meaningful restrictions on inmate telephone privileges, steps up its monitoring of selected inmate calls, and consistently disciplines telephone abusers, no significant change in the level and seriousness of inmate telephone abuse will occur.²

II. The OIG Review

At the outset of our review, we attempted to determine the scope of the problem of inmate abuse of prison telephones. However, we found that the BOP had a paucity of information on this issue. Neither BOP headquarters in Washington, D.C., nor BOP facilities keeps statistics of cases in which inmates are accused of committing crimes from prison using the telephone. Although the BOP maintains statistics on violations of prison regulations, this data does not identify which cases involved the use of telephones. For example, statistics may exist reflecting cases involving an inmate's introduction of contraband into an institution, but the BOP's records would not reflect whether the introduction of drugs was arranged through the inmate's use of the telephone. Moreover, several BOP officials acknowledged to us that their statistics do not represent the overall number of telephone violations because many violations are informally resolved or are dismissed when prosecutors pursue criminal charges arising out of the same events.

Initially, we attempted to independently identify the scope of the problem through a survey questionnaire we sent to various Department of Justice offices. We sent the questionnaire to all 94 United States Attorneys'

² In comments submitted to the OIG, the BOP argued that the magnitude of this problem is exaggerated and the scope and effectiveness of the changes that the BOP has implemented to address the problem are underrated. As described throughout this report, we disagree with these arguments.

Offices, asking them to identify any cases they prosecuted involving crimes committed by inmates using telephones in federal facilities. We sent a similar questionnaire to FBI and DEA headquarters, which distributed it to all FBI and DEA field offices. This questionnaire asked all offices to identify investigations they conducted involving a federal inmate's use of prison telephones to commit crimes. In response to our request, we received information from 72 U.S. Attorneys' Offices, 16 FBI field offices, and 11 DEA field offices. But because these offices do not index cases according to whether they took place in prison or involved the use of telephones, their responses to our questionnaire were based on the memories of the people who answered it rather than a comprehensive statistical analysis.

We also sent a questionnaire to all 66 BOP facilities that use the Inmate Telephone System (ITS), a telephone system that can store and analyze sophisticated data about inmate telephone calls better than the older telephone system used in 27 other BOP facilities. The questionnaire asked each facility to provide data on the total number of calls made by inmates on three separate dates we randomly selected; the number of inmates making more than 25 calls on those dates; the number of telephone numbers dialed over 10 times on those dates; the number of BOP staff monitoring calls on those dates; the number of calls monitored by BOP staff as they took place on those dates; and the number of previously recorded calls listened to by BOP staff on those dates. The questionnaire also asked for information about each facility's policies regarding the hours of and methods of monitoring inmate calls.

In addition, we visited nine BOP facilities to interview the staff responsible for the institution's security and inmate telephone monitoring operations, and also to familiarize ourselves with various relevant aspects of the federal correctional system, field staff operations, and the telephone equipment used in the facilities. The facilities we visited were:

FACILITY	SECURITY LEVEL	POPULATION³
U.S. Penitentiary Lewisburg, PA	High	1,507
U. S. Penitentiary Leavenworth, KS	High	1,721
U. S. Penitentiary Allenwood, PA	High	959
U. S. Penitentiary Atlanta, GA	High	2,248
Federal Correctional Institution Cumberland, MD	Medium	987
Federal Correctional Institution Fairton, NJ	Medium	1,150
Federal Correctional Institution Allenwood, PA	Medium	1,074
Federal Correctional Institution Petersburg, VA	Low	1,324
Federal Correctional Institution Fort Dix, NJ	Low	3,868

We selected these facilities in order to collect information from several different types of BOP institutions, including institutions with different security levels and different physical layouts, two factors that affect the methods of monitoring prison telephones. We visited four penitentiaries, three of which have remote monitoring locations in use and utilize correctional officers to monitor calls; three medium security facilities; and two low security institutions.

To obtain further insight on inmates' use of telephones, we interviewed Rayful Edmond about his experience using prison telephones to commit crimes and his impressions about the extent of inmate telephone abuse. We also reviewed the BOP case files from four inmates whose convictions received significant public attention and who appeared to have the resources to continue criminal activities while incarcerated. We examined these files to determine what steps, if any, the BOP took to prevent these inmates from using the telephones to continue their criminal activities while in BOP custody. In addition, we examined three high-profile prosecutions of prisoners who were convicted of conducting their crimes from inside a BOP facility – the prosecution of Edmond and his co-conspirators; the prosecution of drug dealer and convicted murderer Anthony Jones of Baltimore, Maryland; and the prosecution of alleged mob figure Oreste Abbamonte. Each used prison telephones to commit his crimes while incarcerated. We examined these cases

³ Population at time of site visit in 1998.

to determine how the BOP responded to each case and what, if anything, could have been done differently to detect or deter this criminal activity.

As part of our review, we interviewed numerous BOP officials about the scope of the problem of inmate telephone abuse, reviewed the BOP's current policies regarding this issue, and assessed BOP efforts to address the problem. Among the BOP Headquarters officials we interviewed were the Assistant Director for Correctional Programs; the Deputy Assistant Director for Correctional Programs; the Chief and former Chief of the Intelligence Section; the Director of the Program Review Division; the Assistant Director for Administration; the Chief of the Trust Fund Branch; the Chief of the Inmate Telephone Section; and the Deputy and Associate Deputy General Counsel. In addition, we interviewed nine BOP wardens and members of their staff during our site visits. All told, we interviewed more than 70 BOP employees and about 20 other persons in the Department of Justice during our review. We examined numerous documents, including BOP program statements on the issue of telephones and case law on inmate rights to telephone access. We also reviewed the litigation and the settlement in a large class action lawsuit brought by inmates against the BOP regarding the telephone system.

What we found from these interviews, case examinations, data collection, and document review paints a troubling picture of the scope and seriousness of inmate use of prison telephones to commit criminal activity. In sum, we found that the current monitoring system for inmate call is virtually useless because only three and a half percent of the thousands of calls made daily from each BOP facility are monitored. In addition, prison staff who monitor inmate calls are often untrained and frequently rotated to other assignments at the facility. Consequently, few serious incidents are discovered through BOP's telephone monitoring.

III. Organization of the Report

This report describes the results of our review and is organized into nine chapters and five appendices. In Chapter Two, we provide an overview of the BOP and discuss the history of BOP inmates' access to prison telephones. We also describe the current inmate telephone system, state prison practices regarding telephone use, and the role of the BOP staff in monitoring telephone use in federal institutions. Chapter Three describes the legal and regulatory background to inmate telephone use. Chapter Four assesses the data and

information the OIG collected from its surveys and interviews of staff from United States Attorneys' Offices, the DEA, and the FBI. Chapter Five reviews the case histories of several inmates who conducted serious criminal activity from federal prison, including Rayful Edmond, and our review of the telephone use of four inmates whose crimes received substantial public attention. Chapter Six describes a variety of BOP initiatives over the years to address inmate telephone abuse. Chapter Seven analyzes potential technological and administrative solutions to the problem of inmate telephone abuse. Chapter Eight offers our recommendations, and Chapter Nine describes our conclusions.

CHAPTER TWO

FEDERAL INMATE ACCESS TO TELEPHONES

I. Background on the BOP

According to the BOP's mission statement, its mission is "to protect society by confining offenders in the controlled environments of prison and community-based facilities that are safe, humane, and appropriately secure, and that provide work and other self-improvement opportunities to assist offenders in becoming law-abiding citizens." As of January 1, 1999, the BOP operated 93 correctional institutions. The BOP classifies its institutions into five security levels: Minimum, Low, Medium, High, and Administrative.⁴ On April 30, 1999, the BOP reported the inmate population to be 113,042.⁵ The number of inmates in federal prison has doubled since 1988. Accompanying this steep increase in inmates is a corresponding growth in staff – 30,250 as of January 1999 – making the BOP the largest employer in the Department of Justice.

Kathleen Hawk Sawyer, the Director of the BOP since December 1992, is a career BOP employee who previously served as Assistant Director for the Program Review Division. The BOP's management, administrative, and policy functions are coordinated from BOP Headquarters – known as the "Central Office" – located in Washington, D.C. In addition, six regional BOP offices oversee the operations of the institutions in their regions and provide management and technical assistance and training to those institutions. BOP policies are generally approved by the BOP's Executive Staff, which consists of the Director, the seven Assistant Directors for the Divisions within BOP, and the six Regional Directors. Position papers on important issues are usually

⁴ An institution's security level is determined by the presence or absence of fences and walls, the style of housing, staff-to-inmate ratios, and availability of work and treatment programs. Administrative facilities have special missions, including detaining pre-trial offenders, treating inmates with chronic medical problems, and housing inmates who pose extreme security risks.

⁵ This figure does not include approximately 20,000 more persons housed in contract facilities, privately managed prisons, and other facilities under the BOP's oversight.

presented to the Executive Staff and, after extensive debate, decisions are made by that body.

Two divisions within BOP Headquarters are primarily responsible for overseeing and administering important aspects of the federal prison's inmate telephone system – the Administration Division, including its Trust Fund Branch, and the Correctional Programs Division, including its Intelligence Section. The role each of these units plays with respect to inmate telephone usage and oversight is described in turn.

The Administration Division is responsible for financial management of BOP facilities, including the Inmate Trust Fund. This Trust Fund manages the profits generated by commissaries at federal correctional institutions. Commissaries sell items such as snacks, personal grooming products, and stamps to inmates. Profits made from the sale of commissary items are placed in the Trust Fund and, according to statute, can be spent "for any purpose accruing to the benefit of the inmate body, as a whole, such as amusements, education, library, or general welfare work." Fees charged inmates for their telephone calls are also placed in the Trust Fund. The Administration Division's Inmate Telephone System Section manages the day-to-day operation of the inmate telephone system in BOP's institutions and is responsible for development of the new inmate telephone system.

The Correctional Programs Division is responsible for the day to day administration of inmates. Within the Division, the Intelligence Section develops policy and procedures for investigative and intelligence gathering efforts regarding inmate criminal activity and corruption of BOP staff. The Intelligence Section also develops and oversees the training for the Special Investigator Supervisor (SIS) offices. The Intelligence Section does not manage the SIS offices at each institution; this responsibility falls to the wardens.

Every institution has an SIS office. The primary role of the SIS office is to investigate crimes committed by inmates or staff. The SIS office also conducts administrative investigations that may lead to internal disciplinary measures being taken against an inmate. In addition, the SIS serves as a liaison to other law enforcement personnel, such as the FBI and the OIG, who share responsibility for investigating criminal activities within federal prisons. The SIS office in each institution is supervised by either a non-rotating Special

Investigative Agent (SIA), or a correctional supervisor assigned to be an SIS "Lieutenant" for an 18-month rotation. Some SIS offices are also staffed with less senior SIS technicians. There are also regional SIS coordinators in each of the BOP's six regions.

To perform its primary role of detecting and deterring criminal activity within federal prisons, the SIS is supposed to develop intelligence regarding inmates or inmate groups that pose a threat to the security or safety of others. One of the SIS's specific responsibilities is supervising the monitoring of inmate telephone calls. Typically, SIS technicians, under the supervision of the SIA or SIS Lieutenant, are assigned to monitor telephone calls and maintain tape libraries of recorded calls.

The BOP also has a unit called the Sacramento Intelligence Unit (SIU), located in Sacramento, California, that consists of an agent from the BOP's Intelligence Section, a member of the U.S. Marshals Service's Threat Analysis Division, and a member of the Federal Corrections and Supervision Division of the Administrative Office of the United States Courts. The primary purpose of the SIU is to gather intelligence on gang members or other individuals entering the federal correctional system who may pose a security threat. The SIU gathers its information by coordinating with local authorities to determine inmates' gang ties, position in the gang hierarchy, and the gang member's available resources. The SIU maintains files on individuals and groups and makes its intelligence database available to BOP institutions and law enforcement agencies.

II. Background on Inmate Telephone Use in the BOP

A. The BOP Philosophy on Inmate Use of Telephones

According to the BOP's program statement, granting inmates access to telephones furthers important correctional objectives such as maintaining family and community ties. This in turn facilitates the reintegration of inmates into society upon release from prison and reduces recidivism. The preamble to the BOP's regulations regarding telephones, codified at 28 CFR §540.100, states:

The Bureau of Prisons extends telephone privileges to inmates as part of its overall correctional management. Telephone privileges are a supplemental means of maintaining community and family ties that will contribute to an inmate's personal development.

Several BOP Headquarters staff told us of studies that supported the validity of this policy regarding inmate access to prison telephones. When asked for those studies, the Information, Policy, and Public Affairs Division provided citations to three studies. However, none of the studies examines the use of telephones by prison inmates or analyzes the effect of reasonable telephone restrictions on inmate behavior or personal development.⁶

⁶ The first study cited, "Recidivism Among Federal Prison Releasees in 1987: A Preliminary Report" (prepared by Miles D. Harer of the BOP's Office of Research and Evaluation, dated March 1994), discusses the way in which prison "normalization" – the process of replacing prison misconduct with norms supporting law abiding behavior through social furloughs and educational programs – reduces recidivism. The second study, entitled "Survival Analysis and Specific Deterrence: Integrating Theoretical and Empirical Models of Recidivism" (prepared by Christina DeJong of Michigan State University, Criminology, Vol.35, No.4, 1997), analyzes recidivism rates and concludes that prisoners with fewer ties to society are more likely to commit additional crimes following incarceration. The third study, entitled "Alternative Solutions to the Problem of Selection Bias in an Analysis of Federal Residential Drug Treatment Programs" (written by BOP employees Bernadette Pelissier and others in 1998), deals with statistical problems in calculating the success of drug treatment programs in prison.

The BOP later provided to the OIG eight studies conducted by other researchers which it believes establish that inmates' "telephone usage and other contacts with family contribute to inmate morale, better staff-inmate interactions, and more connection to the community, which in turn has made them less likely to return to prison." However, the few of these studies that address telephones merely suggest that they can be used as a means for the inmates to maintain contact with their families, without any comprehensive analysis. In addition, while recognizing the problems of misuse of the telephones, they do not address whether the inmates are more likely to use the telephones for positive purposes, or for criminal purposes.

B. History of Inmate Access to Telephones

Inmates in federal prison have not always enjoyed unlimited telephone privileges. Until the early 1970s, federal inmates were limited to one collect call every three months. Inmates placed these calls on staff telephones after receiving approval of their written requests to use the telephone. In 1973, the BOP issued a new program statement that directed its institutions to establish a telephone access program to "permit constructive, wholesome community contact." The program statement directed institutions to provide inmates at least one telephone call every three months and also establish procedures to monitor calls in order to preserve security within the prison.

Therefore, in the mid-1970s, the BOP began expanding inmate access to telephones and installed pay telephones in most institutions. According to BOP files, the increased access to telephones was based on "outside influences," including Vietnam, Watergate, inner-city crises, emphasis on "treatment programs," and changes in inmate population characteristics, as well as the BOP's view that there was value in inmates maintaining strong family ties. Installation of pay telephones allowed inmates to place their own collect calls and relieved staff from this responsibility. By 1976, inmates in 31 of BOP's 38 institutions could place telephone calls themselves, while inmates at the remaining seven institutions continued to rely on staff to place their calls. When the pay telephones were installed, the BOP imposed no restrictions on the number of calls inmates could make. Calls made from the pay telephones were generally listened to on a "sampling" basis by correctional officers at each institution if time permitted. Some primitive recording equipment was used to occasionally record specific calls of concern.

C. Inmate Telephone Abuse and the BOP 's Early Responses

As a result of the new procedures in the 1970s, inmate telephone abuse became a problem for the BOP. Serious abuse of the telephone system was noted as early as 1976, when \$100,000 in fraudulent calls were traced to inmates in the Metropolitan Correctional Center in New York City. A similar but smaller fraud scheme by inmates using prison telephones was uncovered at the BOP's Terminal Island, California, facility during the same period. According to a BOP document created before our review that outlined the history of telephone use within BOP institutions, these fraudulent schemes orchestrated from prison telephones "marked a turning point in BOP

philosophy and signaled the general end in expanding access and the loosening of controls."

The BOP also reported in the document outlining the history of telephone use by inmates that it was pressured to make changes in its prison telephone system after several incidents in which inmates placed threatening calls to judges and other government officials. By 1982, 20 out of the 40 BOP institutions had installed devices that could allow BOP personnel to listen to calls as they were made, and the BOP decided to install monitoring equipment in all its institutions. In June 1983, G. A. Ralston, the Regional Director for the BOP's North Central Region, wrote to BOP Headquarters staff proposing a review of agency practices regarding telephone access for inmates in mid- and high-security institutions. Ralston's memorandum was prompted by two serious escape attempts by inmates at the U.S. Penitentiary in Marion, Illinois – at the time the BOP's highest security prison – who had used prison telephones to help make the escape arrangements. The memorandum stated:

Because of the increasingly serious type of offenders housed in our penitentiaries, I believe we need to consider whether or not our present telephone access practices are providing us with the necessary degree of security with respect to escape attempts, drug transactions, and other improper activity.

He added that the "current policy only requires one telephone call per each quarter" but that all the institutions were "operating far beyond that minimum level."

In July 1983, the BOP established a task force to evaluate the inmate telephone program. In its report, the task force characterized the reason for this evaluation:

This reexamination results from inmates seriously abusing the telephone privileges The referenced abuses range from nuisance type calls. . . to the most extreme criminal conduct, including the arranging of murder contracts. To maintain the security and good order of our institutions and to protect the public we must establish reasonable limits to inmates' access to telephones.

In September 1983 the task force recommended a "four-pronged strategy" to prevent inmate telephone abuse:

1. Increase the recording and monitoring of telephone calls, including assigning a full-time telephone monitor in larger institutions and prohibiting calls that are not in English unless authorized by staff;
2. Restrict access to telephones, including limiting the number of telephones available and their hours of use, establishing supervised telephone rooms, and making telephones inoperative unless under the direct supervision of a telephone monitor or other designated staff;
3. Reduce the frequency of calls to one ten-minute collect call every two weeks; and
4. Increase disciplinary sanctions for telephone abuse from a "low moderate" violation to a "high" violation, resulting in more serious disciplinary measures for telephone abuse.

The BOP's Executive Staff reviewed the task force proposals and determined that a central, supervised telephone room at each institution required too much staff and would result in increased inmate movement within the institution. The Executive Staff decided to reject the proposal to limit the frequency of calls because of its concern that "overall the amount of time spent on phones is not the problem; it is the few cases of serious abuse (i.e. criminal activity)." The BOP Executive Staff did decide to install monitoring technology to record 100 percent of all non-attorney calls and provide for live monitoring of some calls by staff at "fixed posts," such as correctional officers located in remote monitoring locations..

In March 1984, five wardens in the North Central Region presented, through Regional Director Ralston, their own recommendations to the Executive Staff regarding the BOP's inmate telephone policies. These recommendations included:

1. Live monitoring of some inmate non-attorney calls. This would include "continuous random monitoring by staff; selective monitoring of inmates suspected of telephone abuse or to gain specific intelligence information."

2. Recording all non-attorney calls.
3. Identifying inmates who made the telephone calls, either by direct observation or a video camera.

The wardens' recommendations raised the possibility of reducing inmate access to telephones but concluded that the frequency and length of inmate calls had not been established as serious problems, and that staff resources required to implement such a change would be excessive. The group also warned that reductions in telephone privileges could reduce inmate morale and result in inmate unrest. The group recommended reducing access to the telephones only if the other recommendations did not succeed during a trial period.⁷

⁷ The results of a 1984 study demonstrated an awareness within the BOP of the problem of inmate telephone abuse. In October 1984, the warden at the Federal Correctional Institution in Ashland, Kentucky, reported to the BOP's Southeast Regional Office the results of his 19-day "cursory" review of previously recorded inmate telephone calls. He stated that, during the review, staff at the prison discovered 15 incidents of inmates openly discussing activities that were illegal or in violation of BOP rules. The Ashland warden concluded:

We are not providing an adequate level of monitoring under present procedures. This is evidenced by the apparent willingness of inmates to openly discuss illegal/illicit or rule infraction activities, while knowing their conversations are subject to being monitored and recorded... Our present monitoring of recordings equates to approximately 10 hours of staff time per week. Unfortunately, this reflects less than 2 percent monitoring... While the intent of initiating inmate telephone programs was good, the programs have deteriorated and are being abused to the point where misuse equals or exceeds legitimate use for maintaining positive family/community contacts... Wholesome, productive calls in which family relationships are maintained, do occur; unfortunately, they are in the minority.

The Ashland warden recommended reducing inmate telephone access to the point where staff could monitor all inmate calls. He also recommended that "patch calls" – three-way or forwarded calls – be specifically identified as a violation of BOP policy.

In the Spring of 1984, the BOP installed telephone recording equipment in five institutions on a pilot basis. In September 1986, the BOP began installing telephone recording equipment and a computer software program called the "Automated Intelligence Management System" (AIMS) in all its prison facilities. The software, developed by the SIS staff at the U.S. Penitentiary in Leavenworth, Kansas, allowed BOP staff to analyze transactional data regarding calls (such as the date and time of the call, the identification number of the inmate placing the call, and the number called) and to locate specific inmate calls.

The Correctional Services Branch of the BOP produced a position paper in 1987 entitled "Restricting Inmate Calls and Impact on Security" while telephone recording equipment and computer search programs were in the process of being installed in BOP facilities. The paper discussed whether it was in the BOP's best interest to restrict the number of people that an inmate could call. The paper noted that several hundred administrative and criminal cases involving prisoners' use of telephones had already been developed through computer assisted monitoring of calls, including escape attempts, domestic terrorism, murder conspiracies, and drug trafficking in prison. However, the paper argued that restricting inmate calls to a pre-approved list of numbers would be "counter-productive and, in fact, detrimental to our current SIS computer based investigative operations." The paper contended that such restrictions would likely force conversations previously recorded on the telephone into the visiting room where they would not be recorded. In addition, restricting the telephone numbers that an inmate could call, the paper argued, would result in inmates using three-way calling to reach the desired party.

D. The Development of the Inmate Telephone System

1. Features and Installation of the Inmate Telephone System

The federal prison system's Inmate Telephone System (ITS) was developed in 1988, partly in response to a change in philosophy by BOP management as to who should pay for inmate calls. Prior to ITS, inmates could make collect calls only, thereby placing the financial burden for the call on the receiving party. In the late 1980s, the BOP began emphasizing inmates' financial responsibility to reduce the burden on inmates' families caused by

collect calling. At the same time, a large increase in the number of inmates from foreign countries in BOP institutions who wanted to place calls overseas contributed to the move away from collect calling.

The ITS system consists of computer hardware and software programs that enable the BOP to debit inmates' commissary accounts for the cost of their calls. ITS uses a computer, a telephone switch, and software that can control and record data regarding calls placed on telephones. Under ITS, each inmate receives a "phone access code" (PAC) to facilitate this debiting and to (at least theoretically) permit correctional staff to identify which inmate made each call without visually checking the telephone area. ITS is also compatible with AIMS, the software used to search and analyze records of inmate calls. Only direct-dial calling was permitted under ITS when it was first implemented; no longer could inmates place collect calls.

The current version of ITS has the capability of significantly limiting and controlling inmate calls. All calls are automatically recorded by recording machines. ITS can provide call record data and real-time alerts that specific inmates are placing calls or calling specified telephone numbers. For example, ITS can:

- restrict calls to specific numbers (currently 30 for each inmate);
- require placement of calls only from specific telephones;
- restrict a specific inmate from placing any telephone calls by "freezing" their PAC number;
- terminate all prison telephone service if security needs dictate; and
- prevent all inmates from dialing specific numbers.

Each institution's ITS is self-contained – that is, ITS cannot be controlled or accessed from BOP Headquarters or from another prison facility. ITS stores information on every call placed, including the date and time, number called, account used, cost, and duration of the call. ITS can produce 26 different reports, including frequency of calls to a particular telephone number, all calls placed by a specific inmate, calls placed to a specific number by more than one inmate, and suspicious dialing patterns, such as attempts to transfer calls or use automated telephone systems outside prison.

Under ITS, the only limitation on the number of calls inmates can make is their ability to pay for them from their telephone accounts.⁸ The system automatically checks the inmate's balance in his commissary account when a call is attempted. When adequate funds for a three-minute telephone call are not available, ITS will not allow the call. Currently, inmates are charged between 15 and 31 cents per minute for debit calls made within the continental United States, depending on the distance of the call. A flat 50-cent fee is charged for local calls, regardless of duration. International calls cost between 18 cents and \$7.06 for the first minute, with additional minutes charged at a slightly lower rate.

The profits generated from ITS calls are significant, even though the system has not yet been fully implemented throughout the BOP. From October 1991 through June 1998, the net income from ITS telephone calls throughout the BOP was approximately \$71.5 million. These profits are placed into the Inmate Trust Fund and only can be used by the BOP to pay for services or activities that benefit the inmate population as a whole. Whether some of these profits can be used to pay for the cost of monitoring inmate calls is discussed in Chapter Six, Section VI, of this report.

2. Washington v. Reno

Full implementation of ITS was not completed. In 1989, following a successful six-month pilot program at the Federal Correctional Institution in Butner, North Carolina, the BOP approved the deployment of ITS throughout the BOP. In August 1991, CONTEL (now GTE) was awarded the contract to install ITS in all BOP facilities. Full-scale installation of ITS began in April 1992, with an anticipated completion date for installation in all BOP institutions by May 1994.

However, 14 months into the installation of ITS, female inmates from the Federal Medical Center in Lexington, Kentucky, filed a class action lawsuit against the BOP on behalf of all federal inmates. The plaintiffs claimed that ITS violated all inmates' First Amendment right of free speech by placing

⁸ The BOP must provide at least one collect call each month for an inmate without funds. An "inmate without funds" is defined as someone who has maintained a trust fund account balance of \$6 or less for the previous 30 days.

limits on their ability to communicate with family and friends. This lawsuit became known as Washington v. Reno. On June 22, 1993, pending resolution of the inmates' complaint, Henry R. Wilhoit, Jr., United States District Judge for the Eastern District of Kentucky, ordered the BOP to halt installation of ITS. At the time of the judge's order, ITS had been installed at 41 out of 84 BOP facilities, and installation was in progress at two additional institutions.

After more than two years of litigation, the lawsuit was settled in November 1995. The settlement agreement between the named plaintiffs and the government required the BOP to install in all facilities a new telephone system with both direct-dial and collect-calling capabilities. The settlement agreement also stipulated that, from the time of the settlement until the time the new telephone system was implemented, the BOP would operate a telephone system "substantially equivalent" to the system in place at each facility prior to institution of the lawsuit.

Also, under the terms of the settlement, inmates are permitted to place up to 120 minutes of collect calls per month as long as they agree to participate in the Inmate Financial Responsibility Program (FRP), a program requiring inmates to pay a portion of their prison wages towards fines and the cost of their imprisonment.

The settlement agreement did not place any limits on debit calling, but guaranteed inmates who refused to participate in the FRP at least 60 minutes of debit calling a month. The settlement also required an "approved calling list" for all inmates of no more than 30 telephone numbers that they could call. Inmates could make up to three changes a month to their calling list, and the BOP is required to implement those changes within five days. If the BOP intends to eliminate collect calling as an option for inmates after the settlement agreement expires, it is required to publish this proposed action in the Federal Register and allow time for public comment.

Finally, and perhaps most importantly, the agreement states that the settlement does not interfere "with the discretion of the Bureau of Prisons and the Wardens of correctional institutions operated by the Bureau of Prisons to limit inmate telephone privileges . . . to maintain the security or good order of the institution, or to protect the public . . . or as a disciplinary sanction" The settlement agreement remains in effect until January 2002. [For a more detailed summary of the Washington v. Reno litigation, see Appendix 1.]

3. Current Telephone Systems in BOP Facilities

As a result of the Washington v. Reno settlement, the BOP currently has three types of telephone systems for inmate use at its 93 institutions:

1. 27 institutions have unlimited collect calling (ITS not installed);
2. 38 institutions have debit calling (ITS installed); and
3. 28 institutions have debit calling and collect calling (modified version of ITS installed).

Inmates at institutions in which ITS has been installed can place calls only to the 30 numbers on their approved telephone lists.⁹ Inmates at institutions without ITS are not required to file telephone calling lists because the BOP has no technology to limit collect calls to pre-approved numbers.

4. ITS II

The BOP has developed a more sophisticated version of ITS called "ITS II," that will provide more options for restricting and controlling inmate access to prison telephones. The contract for development and installation of ITS II was awarded to GTE (the contractor for ITS) on February 20, 1998. Unsuccessful bidders initially filed a protest with the General Accounting Office (GAO), but subsequently withdrew the protest and re-filed it with the Court of Federal Claims. The BOP was required to suspend the procurement process with GTE while the protest was pending at the GAO, but the BOP was permitted to move forward with the contract after the protest had been filed in federal court.

As a result of the contract dispute, the BOP has fallen behind in its original ITS II installation schedule. According to David Woody, Chief of the Inmate Telephone System Section, which handles all aspects of ITS at BOP Headquarters, by November 1999 ITS II should be installed in the 38 BOP

⁹ The one exception to this is at USP Lewisburg, which limits debit calls to 30 approved numbers but allows collect calling to any number.

institutions where the original ITS has been installed. The BOP anticipates having ITS II installed in all of its facilities by December 2000.¹⁰

As of December 1998, a prototype of ITS II had been developed and was being tested at one BOP institution. The most significant improvement over ITS is that ITS II will be a centralized system. While ITS is self-contained at each institution and is incapable of sharing data through a central database, ITS II will allow the BOP to access inmate telephone information from all BOP institutions simultaneously. In addition, ITS II will allow the BOP's Central Office to monitor and record telephone conversations of any inmate in the country. [For a more detailed description of ITS II, see Chapter Seven, Section VIII and Appendix 2.]

5. Inmate Telephone Use in State Prisons

For comparison purposes, we reviewed a 1995 survey of 41 state Departments of Corrections' practices regarding inmate telephone use, which was conducted by Corrections Compendium and published in its May 1995 issue. According to that survey, inmates in most of the 41 states surveyed have almost unlimited access to telephones, restricted only by the availability of telephones. The Texas Department of Corrections, however, provides inmates with one 5-minute telephone call every 90 days.

According to the survey, inmates in 32 of the 41 states must make collect calls. Inmates in eight other states can make direct or collect calls depending on the facility, while inmates in one state have only a direct-dialing option. Approximately half of the 41 states responding to the survey imposed a time limit on inmate calls, usually 15 minutes per call. According to the survey, state prisons appear to be moving toward monitoring and recording all inmate calls. Only ten states reported that inmate calls are not monitored by prison staff or recorded.

¹⁰ According to the BOP Director, these dates have now been extended. The BOP currently estimates that ITS II should be installed in the 38 BOP institutions where the original ITS has been installed by April 2000 and ITS II installed in all of its facilities by January 2001.

CHAPTER THREE

LEGAL AND REGULATORY BACKGROUND

As a matter of law, federal courts have held that inmates do not have a constitutional right to unrestricted telephone communication, particularly when alternate means of communication exist.¹¹ As a matter of policy, BOP regulations state that inmates should be provided telephone access consistent with the requirement of sound correctional management. According to the BOP's program statement "Telephone Regulations for Inmates," conditions and limitations may be imposed on an inmate's telephone use to ensure that it is consistent with the BOP's correctional management responsibilities. Additionally, inmate telephone use is subject to any limitations that individual wardens determine are necessary to ensure the security or good order of the institution or to protect the public. Restrictions on inmate telephone use may also be imposed as a disciplinary sanction.

The BOP has the legal authority to monitor inmate calls because courts have held that inmates are deemed to have no legitimate expectation of privacy in their telephone conversations. Therefore, monitoring of these conversations does not implicate the "seizure" prohibitions of the Fourth Amendment. In addition, although the federal wiretapping statute may impose greater constraints than the Fourth Amendment, that statute states that interceptions of wire communications are permissible by "an investigative or law enforcement officer in the ordinary course of his duties." 18 U.S.C. § 2510(5)(a). Courts have generally concluded that prison officials are "law enforcement officers" as defined under the wiretapping statute and that prison monitoring occurs "in the ordinary course of duties" if it is conducted pursuant to an established

¹¹ In general, courts have held that restrictions on inmate telephone privileges do not violate the First Amendment if they are reasonable. See, e.g., Strandberg v. City of Helena, 791 F.2d 744, 747 (9th Cir. 1986); Fillmore v. Ordonez, 829 F. Supp. 1544, 1563-64 (D. Kan. 1993), aff'd, 17 F.3d 1436 (10th Cir. 1994). See also Benzel v. Grammer, 869 F.2d 1105, 1108 (8th Cir.), cert. denied, 493 U.S. 895 (1989); Lopez v. Reyes, 692 F.2d 15, 17 (5th Cir. 1982); Feeley v. Sampson, 570 F.2d 364, 374 (1st Cir. 1978).

policy that is related to institutional security, is generally applicable rather than directed at a particular inmate, and is made known to inmates.¹²

I. BOP Policy and Practice

The BOP's Program Statement entitled, "Telephone Regulations for Inmates," which was codified at 28 C.F.R § 540.100 *et seq.*, states that inmates are permitted to make at least one telephone call each month unless they have been restricted from telephone use as the result of an institutional disciplinary sanction. In practice, however, the BOP places no limits on the number of telephone calls inmates can make at most facilities. As discussed previously, inmates at most ITS institutions have unlimited calling privileges to contact up to a maximum of 30 individuals on an approved telephone list. Inmates prepare their proposed telephone lists during their admission and orientation process at a new BOP facility. The institution's associate warden may authorize an inmate to have access to more than 30 numbers in unusual circumstances.

Inmates may submit on their list telephone numbers for any person they choose, with the understanding that all calls are subject to monitoring. Inmates are required to pledge that any calls made from the institution will be made for a purpose allowable under BOP policy or institution guidelines. Third party billing and electronic transfer of a call to a third party are prohibited.

Normally, telephone numbers requested by the inmates are approved without review. When inmates request persons other than immediate family members or persons already on their visiting list,¹³ BOP staff are required to

¹² See, e.g. United States v. Lanoue, 71 F.3d 9966 (1st Cir. 1995). See also Opinion of the Department of Justice Office of Legal Counsel U. S. Dept. of Justice re Disclosure of Recorded Inmate Telephone Conversations by the Bureau of Prisons (January 14, 1997).

¹³ A visiting list is a list of individuals who are approved to visit a specific inmate at his institution. Each inmate submits a list of proposed visitors. After "appropriate investigation," BOP staff compile a visiting list for each inmate and distribute it to the inmate and visiting room officer. Staff may request background information from potential visitors who are not immediate family members before including them on the approved visiting list. When little or no information is available on the potential visitors, visiting may be denied pending receipt and review of necessary information, including information that is available about the inmate or the inmate's offenses. At medium and high security level and (continued)

notify those persons in writing to afford them an opportunity to object to being placed on an inmate's telephone list. Other than notification, however, no screening of these individuals or other investigative effort is made.

BOP regulations direct wardens to refer incidents of unlawful inmate telephone use to law enforcement authorities. According to BOP regulations, telephone "misuse" refers to such things as using the telephone to intimidate a potential witness or for other criminal purposes. Using another inmate's phone access code (PAC) or providing a PAC to another inmate is considered "misuse" and is subject to discipline. Inmates who violate the telephone rules may have their privileges restricted or revoked.

Each warden is required by BOP's program statement to establish procedures to enable monitoring of inmate telephone conversations on any telephone located within the institution. The term "monitoring" is not defined in the BOP program statement, so it is not clear whether this means recording of calls or live-monitoring by the BOP staff. According to the BOP's program statement, the purpose of monitoring is to preserve the security and orderly management of the institution and to protect the public.

In all BOP facilities, a notice is placed on inmate telephones advising the user that all conversations are subject to monitoring. Use of the telephones by inmates, therefore, constitutes their consent to this monitoring.¹⁴ Inmate calls to attorneys are an exception to this rule and will not be monitored by BOP staff if the inmate follows proper procedures, established by the warden at each institution, to arrange and place attorney calls.

(continued)

administrative institutions, staff are expected to obtain background information from potential visitors who are not immediate family members.

¹⁴ 18 U.S.C. Section 2511(c) permits interception of telephone communications with the consent of one party to the communication. Many courts have held that prison monitoring is exempt under the federal wiretapping statute because inmates voluntarily choose to make telephone calls with the knowledge that they can be recorded. See, e.g. United States v. Workman, 80 F.3d 688, 693 (2d Cir. 1996); Opinion of Office of Legal Counsel re Disclosure of Recorded Inmate Telephone Conversations by the Bureau of Prisons (January 14, 1997). Other courts have rejected this reasoning, arguing that the consent is not voluntary because inmates have no choice other than to forego telephone privileges entirely. See Landon v. Hogan, 71 F.3d 930, 936 (1st Cir. 1995)

BOP Headquarters has not issued any policy detailing how much "live monitoring" or review of recorded calls staff at each institution should conduct. Rather, determinations about the amount and methods of monitoring are left to individual wardens. Some institutions have remote monitoring locations. At these locations, officers randomly listen to some calls as they are occurring. This monitoring is in addition to their regular duties. Most of these institutions require the officers to monitor a minimum number – usually five – telephone calls during their shift. The officers are required to fill out a form describing the content of each monitored call and submit these reports to the institution's SIS office. The SIS offices are supposed to review the reports and decide if any further action is required.

Most institutions without remote monitoring locations have established a fixed listening post where a staff member assigned as the telephone monitor listens to inmate calls in addition to other duties, such as reviewing inmate mail. This telephone monitor normally works only during the day shift. However, wardens at several institutions have assigned a telephone monitor to the evening shift as well.

II. Prohibited Acts

The BOP has specific policies covering the discipline of inmates whose behavior is not in compliance with BOP rules. Depending on the severity of the violation, improper inmate conduct can be handled "in-house" as an institutional disciplinary matter resulting in the restriction or revocation of an inmate's privileges or segregation of the inmate from the general prison population. Suspected criminal violations by inmates are referred to the FBI or other law enforcement agencies for investigation and can result in both criminal charges and administrative sanctions.

The BOP organizes "prohibited acts" by inmates into four categories and assigns each category a code:

1. Greatest (100 series) – includes murder, assault, rioting, using narcotics;
2. High (200 series) – includes fighting, stealing, bringing alcohol into the institution, extortion;

3. Moderate (300 series) – includes refusing to work, insolence to staff, gambling; and
4. Low Moderate (400 series) – includes possessing another inmate's property (including a PAC), abusive or obscene language, tattooing.

Unauthorized use of the telephone is currently designated a "Low Moderate" violation – the lowest category of prohibited acts – with the appropriate sanction being a loss of privileges, such as telephone, commissary, or visiting privileges. Low Moderate violations may be resolved informally, which means that there may be no record of the violation. Informal resolution can take place between the inmate and the inmate's unit team – a group of BOP employees who oversee the inmates' adjustment, work assignments, and other behavior in a housing unit.

According to the BOP's disciplinary policies, inmates who repeatedly violate BOP rules can receive increased sanctions. For example, if an inmate commits a second violation in the Low Moderate category within six months of the first violation, the inmate can receive a sanction appropriate for the offense (such as loss of telephone privileges) plus segregation for up to seven days and forfeiture of earned "good time" of up to 10 percent or 15 days. A third violation in the Low Moderate category raises the recommended sanction to that available for violation of Moderate (level 300) offenses, such as delay of a parole date, loss of good time of up to 25 percent or 30 days, or segregation for up to 15 days. However, if prior offenses have been resolved informally, they cannot be considered for the purpose of increasing an inmate's punishment based on repeated acts.

In response to concerns about the informal resolution and limited sanctions for telephone abuse violations that fall into the Low Moderate category, in December 1997 the BOP Executive Staff approved raising the severity level for inmate telephone abuse from "Low Moderate" (level 400) to "Greatest" (level 100) when a crime is committed with the telephone and to "High" (level 200) when a criminal offense is not involved. The proposed change is not yet in effect. The regulations needed to implement this change were not published in the Federal Register until early 1999, and the comment period closed in April 1999. (See Chapter Six, Section IV, D and Chapter Seven, Section IV for a discussion of this issue.)

III. SIS Role

In its "Special Investigative Supervisors Manual" (SIS Manual), the BOP encourages a proactive approach to deterring criminal conduct by inmates. The SIS Manual directs SIS staff to use threat analysis, risk assessment, analysis of connections between inmates, and intelligence sources to prevent illegal conduct by inmates while still in the planning stage. The manual also states that the SIS should determine which inmates are engaged in activities that pose a threat to the welfare of the community. The SIS Manual provides examples of how the current version of ITS can assist staff in this task.

In August 1997, the Intelligence Section at BOP Headquarters issued an Inmate Telephone Monitoring field guide for wardens and SIS staff. The guide states that one of the BOP's primary concerns is to ensure that inmates who were convicted for playing leadership roles in major drug trafficking organizations do not continue their criminal operations using prison telephones. The guide stresses that inmates should not be permitted to talk on the telephone when they should be at their job or educational assignments. The guide notes that some inmates may require reassignment from orderly jobs or similar positions that provide them a great deal of flexibility and autonomy so that their time is more fully engaged. The guide also cautions against permitting a small number of inmates to dominate the telephones.

In addition, the guide suggests that "population profiling" should be a major component of an institution's monitoring operations. For example, the guide acknowledges that it is not possible for staff to consistently listen to 100 percent of inmate calls. For this reason, the guide states that any inmate telephone monitoring should place the highest priority on identifying and tracking inmates with the greatest likelihood of using their telephone privileges to engage in criminal or illicit activity. Inmates identified as having a high likelihood of engaging in crime while incarcerated, such as drug dealing and escape plots, should be targeted and their telephone conversations subject to intense review.

CHAPTER FOUR

OIG REVIEW OF INMATE TELEPHONE ABUSE

I. Determining the Scope of Inmate Telephone Abuse

At the outset of our review, we asked the BOP to provide us with any information it had developed on the scope of inmate use of prison telephones to engage in criminal or prohibited activities. Understandably, determining the extent of inmate telephone abuse is a difficult task. Although all calls made by inmates are recorded – with the exception of pre-arranged inmate-attorney calls – less than three and a half percent of all inmate calls are ever listened to by BOP staff. The roughly 200,000 calls made by inmates each day, coupled with the limited number of staff available for monitoring, make it difficult for the BOP to estimate the extent of inmate abuse through its existing monitoring practices.

The BOP has made no comprehensive attempt to collect information from its institutions on this subject or even to keep statistics on criminal referrals involving use of prison telephones. Rather, the BOP has conducted only limited samplings to determine patterns of inmate telephone usage and staff monitoring. Moreover, this research has focused on inmate use of the telephone and the amount of monitoring, but has not addressed the issues of whether the telephones were being used for criminal activities or the effectiveness of BOP's telephone monitoring.

In response to our request for all records relating to the telephone system, the BOP provided documents that described its sampling efforts. The first was a BOP report summarizing results from a survey of 50 ITS institutions in November 1996 to determine the capability of ITS's search program to identify inmates who make an unusually high number of telephone calls. The survey results indicated that inmates made an average of 1.77 calls each day. The survey also found that some inmates with a high risk of continuing criminal activities while incarcerated were assigned to work details with only moderate levels of supervision. The report recommended placing

such inmates in SENTRY,¹⁵ the BOP-wide database used for tracking inmates, under the new "phone abuse" security threat group (STG)¹⁶ category to better monitor their future job assignments, housing assignments, and disciplinary history.

As a result of this 1996 survey, the BOP referred four cases of inmate telephone abuse to the FBI for investigation, and the BOP identified several more cases "with potential for referral." The report of the survey said that "a number of institutions responding to the survey indicated that it was a 'real eye opener,' and reported renewed emphasis on interdicting inmate telephone abuse." The report also stated that although 15 out of the 50 institutions surveyed reported no telephone abuse by the inmates, "this would appear unlikely" and those institutions should be contacted to confirm that the searches were operating properly.

The BOP's Intelligence Section also requires that each institution file a Monthly Activity Report through the Regional Offices. One category in this report concerns inmates' use of prison telephones. Among other statistics, the report includes data on and descriptions of incident reports written about phone and mail abuse, the number of subpoenas for telephone data received by the institutions, inmates placed on mail monitoring, and any phone or mail intelligence that may affect other institutions. The Intelligence Section compiles the data and distributes a summary of the results to each institution. Although the monthly reports have some value by noting trends in telephone usage, they include no analysis or conclusions. One thing these summary reports do make clear, however, is that SIS offices are writing very few incident reports for inmate telephone abuse.

¹⁵ The SENTRY system is a BOP computer database that contains vital information about each inmate. BOP attempts to keep the database current, so that consulting it should indicate exactly where an inmate is housed at all times. It includes information such as the crime for which the inmate was convicted, any orders for separation from other inmates, disciplinary violations in prison, and special skills or relationships which might make the inmate a danger to the safety of the institution or the public.

¹⁶ The Security Threat Group (STG) categories exist to notify institution staff of potential problems with an inmate. Examples of these STG categories are affiliations with various known gangs or criminal enterprises, special skills such as lock-picking or bomb-making, or a history of misconduct in prison, such as sexual assault or escape attempts.

In September 1997, the Intelligence Section sent a survey to all 91 BOP institutions about inmate telephone access. Eighty-eight institutions responded. In a report issued in March 1998, the Intelligence Section summarized the results of this "Inmate Telephone Access Survey":

- All 88 institutions reported that all inmates' non-attorney calls are recorded on SIS equipment;
- Inmate telephones were operational an average 18.3 hours per day;
- An average of 2,542 calls were made each day, per institution, over the ten-day survey period;
- Each inmate made an average of 2.11 calls per day over this ten-day period;
- 31 institutions reported having full-time telephone monitoring staff positions;
- 53 institutions reported assigning telephone monitoring to employees who were also assigned other duties;
- 34 SIS Technicians had other duties in addition to telephone monitoring;
- 51 institutions used pre-approved telephone lists;
- 23 institutions had centralized telephone rooms;
- 5 institutions used video cameras to monitor inmate telephone areas; and
- An average of 2 subpoenas from law enforcement agencies was received per month at each institution, with an average of 53 telephone calls requested per subpoena.

Finally, the BOP reported to us the discovery of several specific schemes in which inmates in one federal prison talk to inmates in another federal institution – a violation of BOP regulations – through a conference calling feature. Inmates call an outside party with the conferencing ability. According to David Woody, the Chief of the Inmate Telephone System Branch, the BOP believes three-way calling is the method by which inmates coordinated simultaneous riots at various institutions.

FCI Marianna, Florida identified four telephone numbers that inmates called in order to speak to other inmates. An individual outside the institution provided a series of numbers for inmates to call for a fee and then connected the inmates through a three-way calling feature, thereby allowing inmates to communicate between institutions. These inmates were using this service primarily to establish intimate relationships with inmates in a prison camp. Other inmates were communicating with boyfriends and husbands incarcerated at other institutions.

In addition, in the past few years small businesses have sprouted up offering to arrange call forwarding for families of inmates. One such company has a brochure advertising five-and-ten cents-per-minute calling plans for families who are "tired of paying high phone bills from your loved ones in prison." This company apparently is a third-party representative of a larger corporate distributor of wholesale and retail long distance telecommunication services.

Using this company, an inmate calls a local telephone number for a flat fee of 50 cents and the call is automatically transferred to another telephone. ITS recognizes the call as a local call and BOP officers are unaware, by reviewing transactional data, that the inmate was actually connected to a third number.

One of the great ironies of the company discussed above is that it was started by and is run by an inmate incarcerated in a BOP facility. To this day, the inmate uses prison telephones to run his business from prison. The inmate started the business with another inmate who has since been released. Both inmates were disciplined repeatedly for telephone violations and had their telephone privileges suspended for running a business over the telephone. However, both inmates' telephone privileges were always restored.

Finally, a study conducted in April 1998, by a private company called Criminal Investigative Technology (CIT), analyzed calls from the Lorton Prison Inmate Telephone System. Lorton is not a BOP facility, and may not be illustrative of the type of telephone abuse that occurs at BOP facilities. However, CIT's findings are included in this report because of the paucity of other statistics on the scope of telephone abuse. This study showed that a very high number of inmate calls may be to targets of ongoing investigations.

CIT analyzed a "sample set" of calls from four days' worth of calls made from Lorton. During the four day period, approximately 3950 inmates made a total of 73,943 calls to 13,810 different telephone numbers. A sample of 1595 of the 13,810 calls were selected for analysis. CIT reported that these numbers were chosen because they were the ones most frequently called by the inmates. These 1593 were then run against an FBI database of telephone numbers belonging to or called by FBI targets of investigation. CIT reported that it found that 495 of the calls, or 31 percent, were numbers in the FBI database, meaning that 31 percent of the Lorton calls analyzed were either calls to targets of investigation or calls to other numbers called by those targets.

In sum, while this data provides an overview of the extent of telephone use and monitoring operations, the BOP has no comprehensive information on the scope of inmate telephone abuse. The BOP data focuses more on the overall numbers of calls by inmates and staff monitoring operations rather than assessing whether this monitoring is effective or whether the extent of telephone abuse by inmates is a significant problem.

II. OIG Data Collection

Given the importance of determining the scope of inmate telephone abuse, the OIG tried in various ways to collect relevant information. We visited nine BOP institutions of varying security levels that are using ITS.¹⁷ We visited four penitentiaries (USP Lewisburg, USP Allenwood, USP Leavenworth, and USP Atlanta); three medium security facilities (FCI Cumberland, FCI Fairton, FCI Allenwood); and two low security facilities (FCI Fort Dix and FCI Petersburg).¹⁸ During those visits, we observed the basic procedures and staffing for telephone monitoring and examined inmate calling statistics. We also investigated each institution's response to evidence of telephone abuse and any proactive measures each took to detect and prevent

¹⁷ We did not focus on the institutions without ITS because they will eventually be converted to ITS. We therefore wanted to concentrate our review on the institutions with the more advanced technology.

¹⁸ BOP institutions are categorized according to the security level of each facility; minimum security, low security, medium security, high security and administrative. Federal Correctional Institutions (FCI) are either low or medium security facilities; U.S. Penitentiaries (USP) are high security facilities.

such abuse. At each institution, we interviewed members of the SIS staff, the telephone monitoring officer (if there was one), officers who engaged in telephone monitoring at a remote location, and the institution's staff who handled the financial and administrative side of ITS.

We also developed a detailed questionnaire for the 66 BOP institutions that use ITS. The questionnaire sought information about the volume of inmate calls and each institution's monitoring practices, staffing, equipment, and other policies related to detection of telephone abuse. Our questionnaire was designed to develop more comprehensive information about individual inmate calling patterns, monitoring practices, and goals in each institution. The questionnaire was completed by members of the SIS staff at each of the 66 institutions.

In addition, we surveyed all FBI and DEA field offices, and the 94 U.S. Attorneys' Offices seeking information on cases stemming from inmate telephone use in federal prisons.¹⁹ Unfortunately, we found that these offices do not index cases in a way that would identify whether a prison telephone was used to commit a crime. Most of the offices surveyed noted that their responses relied on the memory of the person who answered our questionnaire rather than on a systematic search of their records. Therefore, these responses are more qualitative than quantitative in nature and do not purport to estimate the full scope of the problem.

At the BOP Headquarters level, we interviewed Rob Baysinger, Chief of the Intelligence Section; David Woody, Chief of the Inmate Telephone Section; Michael Atwood, Chief of the Inmate Trust Fund; Michael Cooksey, Assistant Director of the Correctional Programs Division; and OGC attorneys Carolyn Sabol and Doug Curless. These interviews revealed very divergent views. Woody and Atwood, the developers and managers of the telephone system, had little insight into the scope of the problem and had dealt mainly with fraudulent use of the system – i.e., inmates circumventing the system and not paying for calls they made – rather than the problem of using the telephone to commit crimes. OGC attorney Sabol, who was involved in the Washington v. Reno litigation, said that while telephone misuse occurs, most inmates are using the telephone to stay in touch with their families. Baysinger and

¹⁹ Seventy-five percent of the U.S. Attorney's Offices responded.

Cooksey admitted that telephone misuse was a very serious problem, but stressed that unless the BOP were to prevent inmates from using the telephones entirely and also restrict visiting and mail privileges, limiting telephone privileges alone would not prevent inmates from continuing criminal enterprises from prison.

Although our data gathering efforts cannot provide a complete picture of the extent of the problem, the information we collected clearly indicates that the scope of inmate telephone abuse is larger and more widespread than previously reported. The following details our findings.

III. OIG Field Visits²⁰ and Survey of ITS Institutions

A. Current Calling Patterns

BOP regulations permit inmates to make at least one telephone call per month, but in practice the BOP allows unlimited calling. The responses to our survey revealed that inmates make an average of approximately 1.4 calls per day.²¹ Thus, with an average of 1,282 inmates at each surveyed institution, inmates at each institution placed approximately 2,000 calls every day.

At the nine institutions we visited, we found that 72 percent of inmates used the telephone less than 300 minutes during March 1998.²² Twenty-four percent of inmates were on the telephone from 300 to 999 minutes during the same month, while four percent of the inmates were on the telephone from 1,000 to 4,000 minutes. Approximately three inmates per institution spent

²⁰ The OIG prepared a detailed summary of its findings regarding each institution we visited. Because of security concerns, however, this summary will be provided only to the BOP. We have also removed some other limited information from the report that the BOP believed would compromise security. We do not believe that these redactions have affected the content of the report.

²¹ The BOP maintains that 1.1 calls per inmate per day is a more accurate figure because the higher number takes into account calls that were placed but not connected.

²² We selected 300 minutes as a threshold because a proposal made by the 1997 warden's working group discussed in Chapter Six, *infra*, would limit inmate calls to 300 minutes or less per month. Three hundred minutes equates to approximately five 15-minute telephone calls per week.

more than two hours a day – or more than 4,000 minutes during the month – on the telephone. In fact, we found that 27 inmates at the nine institutions spent over 66 hours during the month on the telephone and that none of the institutions had done anything about this fact or were even aware of it. In addition, the OIG survey of BOP ITS facilities found that an average of 12 inmates at each of the 66 facilities made 25 or more calls per day. [For an overview of calling and monitoring patterns at the ITS institutions we surveyed, see Table 1.]

At the nine institutions we visited, inmate telephone calls were limited to 15 minutes. However, we found no requirement for a set period of time between calls. Consequently, inmates cut off by the ITS system after 15 minutes could immediately redial the number to continue the conversation.

Through our interviews of BOP staff and inmates, we learned that inmates use at least two methods to avoid having the telephone number they are ultimately connected to detected by the BOP: three-way calling and call forwarding. In three-way calling, the inmate dials a telephone number from his approved calling list. The recipient of the call then dials a third party and joins all three people together. If the second telephone number called is a long distance call, the party the inmate called first – rather than the inmate – is billed for the toll call.

In call forwarding, the inmate dials a telephone number from his approved list which, because it has a call forwarding feature activated, automatically transfers the call to a pre-determined number. Again, the first called party – not the inmate – is billed for any toll charges. The BOP prohibits the use of three-way calling and call forwarding to ensure that prison telephones are not misused and that inmates are financially responsible for their calls. However, the BOP's current telephone system can only detect the first number the inmate dials, not any subsequent numbers to which the call is connected. Only by listening to the call, and detecting that additional numbers are being dialed or third parties are speaking on the line, can BOP staff detect call forwarded or three way calls.

B. Current BOP Monitoring Efforts

Our review found that the BOP's monitoring of inmate telephone calls is inadequate in various ways. The BOP listens to less than four percent of all

inmate calls and clearly has insufficient staff to significantly increase that percentage. Even with substantially more staff, only a small percentage of the approximately 200,000 inmate calls made every day could be monitored.

We also found in our survey that even though inmate telephones were available an average of 18 hours per day, the institutions had staff assigned to listen to telephone calls an average of only 14 hours on weekdays and 12 hours on weekends. The nine institutions we visited had no telephone monitors on duty during the evening hours – the time when statistics show inmates place the most calls. Our survey also indicates that 16 of the 66 ITS institutions assign staff to listen to inmate telephone calls less than 50 percent of the time that the telephones are in operation. While all calls are recorded and can be listened to later, we found that this rarely occurred.

In addition, during our site visits we found the BOP staff responsible for monitoring inmate telephone calls were not sufficiently trained on the monitoring equipment or monitoring procedures. We did not talk to any telephone monitor who had received anything other than on-the-job training. We found no monitors who received formal instruction on the best way to monitor, how to recognize suspicious activities or coded inmate language, which inmates should be monitored, or how to detect three-way calls. We found that the position of telephone monitoring officer is generally a rotating assignment, typically lasting 18 months. Several telephone monitors we interviewed said that by the time they learn to effectively monitor inmate calls, their rotation is nearing its end. They suggested that the telephone monitoring position should be a permanent assignment.

Of the nine prisons we visited, only USP Leavenworth had a permanent telephone monitoring officer. Not surprisingly, we found that USP Leavenworth's monitoring program was far superior to the other prisons we visited. Because of her experience and knowledge of the inmates and how they use the telephones, the telephone monitor at Leavenworth is able to be more proactive in her monitoring efforts. She tracks the calls of certain inmates using the alert function on ITS that notifies her whenever those inmates make a call; she routinely runs reports to identify persons making excessive calls and monitors those inmates' calls; she cross-references a visiting room database with abuser reports and telephone monitoring reports filed by remote monitoring officers. By contrast, the staff telephone monitors with whom we spoke at other institutions did not use tools that were available to them, such as

the alert function that would notify the monitoring officer with an audible alarm whenever specified inmates were using the telephone. Three of the nine telephone monitors were not even aware that ITS had such a function.

We also found that remote monitoring officers who are assigned collateral duties of monitoring some inmate calls generally monitor such calls in a perfunctory way and do the minimum required by their post orders. For example, at USP Atlanta, the "post orders" expect (but do not require) each officer to listen to and file telephone monitoring reports for six or seven telephones calls each shift. That would result in 135 telephone monitoring reports each 24-hour period. Instead, we were told that between zero and 16 reports were filed each day at this institution. In addition, many of the reports written by these officers that we reviewed were virtually useless, containing notations like "call in Spanish," or "sex talk." Reports such as these do little to help the BOP's monitoring efforts.

Also at USP Atlanta, we found that five of the nine telephones used for remote monitoring of calls were broken and no work orders had been submitted to repair the majority of them. The telephone monitor in Atlanta told the OIG that it was his opinion that the officers who were supposed to use the monitoring equipment were breaking the equipment so they would not have to monitor inmate calls. We contacted the monitor again several weeks after our visit, and he informed us that the remote monitoring telephones had not yet been fixed.

Many of the inmate calls are in foreign languages. None of the facilities we visited had monitoring staff fluent in French, Russian, Chinese, or Arabic. Many BOP facilities do not have monitors who are fluent in Spanish, despite the fact that many have a significant Spanish-speaking population.²³

At the institutions we visited, we found that virtually no review is performed on the inmates' telephone calling lists, not even on those of inmates who, because of the nature of their criminal backgrounds and their contacts on

²³ The BOP asserts that it can make available to institutions staff fluent in a multitude of languages in order to translate calls for monitoring staff. Yet, we did not find that monitors request such translation when reviewing calls on a routine basis. The SIS staff we interviewed reported that most foreign language calls are not translated.

the outside, are likely to continue their criminal activities. Inmates are permitted frequent changes to their telephone lists, and BOP staff normally approve the changes without review. None of the institutions we visited asked the SIS office to review inmate telephone lists.

Even though BOP associate wardens have the authority to block numbers from being placed on inmates' telephone lists, we found no evidence at the institutions we visited that calls to any numbers were blocked because of a danger to the public. The only blocks on telephone numbers we discovered were those instigated by the SIS as a result of inmate misconduct, such as inmates calling radio stations to request specific songs that served as a signal to a person outside the prison or inmates using the telephone to access bank accounts for fraudulent purposes.

We found that many facilities make little or no effort to monitor telephone use by high-risk inmates. For example, in response to our survey, 27 percent of the institutions reported that they do not use the "alert" function on the ITS system that informs BOP staff when certain inmates are using the telephone. At the nine institutions we visited, we found that there were few proactive investigations of any high-risk inmates' use of the telephones. We found that several of the nine institutions made no attempt to even identify inmates who posed a high risk of using the telephones for criminal activity.

Former head of BOP Intelligence Craig Trout told us that ideally the BOP would have full background information on inmates from law enforcement, would identify at-risk inmates, and would establish a "search file" to determine if the inmates were contacting previously identified co-conspirators or known criminals. He said, however, that the pre-sentence investigations (PSI) reports prepared by the U.S. Probation Office for sentencing purposes are not sufficiently detailed to provide the BOP with information to target inmates who are likely to continue their criminal enterprises while incarcerated. He said more than 62 percent of BOP inmates are convicted of drug offenses and that their PSIs are usually "boilerplate" reports. Trout stated that the SIS offices do not have the resources to conduct independent investigations into the backgrounds of inmates and, without some information in the PSI that would flag the necessity to do so, would not undertake such an investigation.

The SENTRY computer system has a category for telephone abuse to identify inmates who pose a significant threat to the safety of the institution and the public based on their criminal history, skills, or behavior. Inmates who pose such a risk because of their abuse of telephone privileges are also entered into the database. However, in our survey of 66 BOP institutions, only 12 reported having a written policy describing when an inmate should be placed in the phone abuse category. As of November 2, 1998, 322 of the BOP's 122,000 inmates were listed in the SENTRY category for telephone abuse. According to SENTRY data, 36 percent of BOP institutions have no inmates in the phone abuse category; 45 percent have 1-5 inmates in the category; 8 percent have 6-10 inmates; and 11 percent have 11 or more.

All of the institutions we visited ran "excessive calling reports," which list inmates who made more than the institution's average number of telephone calls in a given period. These excessive calling reports can provide information suggesting illicit activity or failure to perform work assignments. We found that the SIS offices at these nine institutions normally did not take any action to follow-up on the excessive callers – e.g., to listen to recordings or live monitor the calls made by excessive callers to determine whether they were abusing telephone privileges or conducting illegal activities. We found that the most common SIS response to an excessive volume of calls was to ensure that the caller did not have access to telephones during his work shift.

C. The SIS Offices

Our review found that monitoring the telephones and determining the scope of inmate abuse is a low priority for SIS staff. We found that the primary focus of the SIS offices is maintaining the security of the institution, not preventing crimes outside the institution committed by BOP inmates. The SIS offices that we visited concentrated on internal investigations, such as violence among inmates or against guards, the introduction of drugs and other contraband into the institutions and the prevention of escapes. Even the Special Investigative Supervisors' Manual – known as the SIS staff "bible" – focuses primarily on detecting and deterring crime in prison and devotes little attention to inmates conducting criminal activities outside prison. Outside of urging SIS staff to be "proactive," the manual fails to provide any techniques to identify inmates who are, or may potentially be, involved in committing crimes outside of the institution.

Most institutions surveyed said that they do not have the resources to undertake proactive investigations. For example, a typical SIS office we visited normally had only between one and three officers, depending on rotational assignments, to investigate 15–20 active inmate cases and 6 active cases into BOP staff members. Some SIS offices also spend significant time fulfilling subpoena requests, which takes time away from investigating and preventing telephone abuse. When an inmate's telephone conversations are subpoenaed by a law enforcement agency, the subpoena is reviewed by the institution's legal office and forwarded to the SIS office for fulfillment. The SIS must locate the requested calls on cassette tapes or reel-to-reel tapes, record the targeted calls, and complete the appropriate paperwork. An SIS officer at USP Allenwood estimated that five hours of inmate telephone conversations takes SIS staff 10–12 hours to locate and record. We were also told that fulfilling subpoenas takes priority over investigations.

Even taking into account the time needed to fulfill subpoena requests, the SIS offices we visited appear to be taking few steps to address telephone abuse. They were not targeting any inmates for special telephone monitoring, and, as noted above, are not using the ITS alert system to inform monitors of calls made by high-risk inmates. While the SIS offices at all the institutions we visited attempted to check their telephone records for excessive callers on a regular basis, they did not review calls made by those inmates or take other action when they discovered inmates who used the telephone excessively.

D. Disciplinary Sanctions for Telephone Abuse

From January through October of 1998, 3,217 inmates, or approximately three percent of BOP inmates, were charged with Series 406 violations, which includes both telephone and mail abuse. The BOP could not provide us with the number of Series 406 violations relating only to telephone abuse.

The sanctions imposed by BOP for violations of telephone privileges are not standardized and vary widely by institution. In addition, the punishments for such violations are generally quite lenient, even after repeated violations.

At most of the institutions we visited, we found that only recently had there been emphasis on writing incident reports for telephone abuse. Moreover, several SIS officers told us that because telephone abuse is in the lowest category of infractions, inmates do not worry about getting disciplined

since the sanctions are not severe. We also asked the U.S. Attorneys' Offices and the FBI and the DEA whether they were aware of any disciplinary action taken by the BOP in the criminal cases involving inmate's telephone use that they had reported to us. For virtually all of the cases, they said that they were unaware of any discipline imposed in addition to the criminal prosecution.

According to former BOP Intelligence Chief Trout and current Intelligence Chief Rob Baysinger, there are several reasons why a relatively low number of inmates have been charged with telephone abuse. First, many less serious violations are resolved informally and are not recorded in SENTRY. In addition, not all wardens emphasize writing telephone abuse incident reports. Finally, inmates who use the telephone in order to commit a crime or more serious rule infraction are usually charged with the more serious offense and are not charged with telephone abuse. The BOP is not able to provide information about the use of telephones to commit crimes or more serious BOP infractions unless the inmate is also specifically charged with a 400-level telephone abuse violation.

Based on the BOP statistics, we were unable to determine how many cases involving the use of prison telephones were referred by the BOP for prosecution. Although the SIS manual requires staff to closely track cases the BOP refers for criminal prosecution, our review found that the BOP does not consistently do so. BOP Headquarters also could not provide us with statistics on the total number of criminal referrals made from its institutions, whether the cases were prosecuted or declined, and the outcome of the prosecuted cases. As a result, we were not able to make any comprehensive assessment about what type of cases are being made by the SIS, what type of cases are referred for prosecution, and the outcome of those referrals.

IV. FBI Information

To further investigate the scope of inmate telephone abuse, we sought information from the FBI, which has primary investigative jurisdiction for the prosecution of criminal acts within federal correctional facilities. We surveyed the FBI field offices about any cases in which inmates facilitated a crime from prison by using the telephone. We also interviewed FBI special agents with experience investigating these types of cases. We first describe the information provided by the Williamsport, Pennsylvania FBI office which handles a high percentage of the FBI cases involving crimes in prison.

A. Williamsport, Pennsylvania FBI Office

According to Michael Hahn, the Resident Agent in Charge of the FBI's Williamsport office, 40 percent of all FBI cases involving crimes in prison are investigated by his office. This office is close to USP Lewisburg and the Allenwood prison complex. Four of the seven FBI agents in the office work exclusively on prison cases.

Hahn told us that, in his experience, the combination of unmonitored contact visits, telephones, and mail that is not inspected because it is marked "legal mail" makes it possible for criminal enterprises to be run from prison. Hahn said that when large scale drug dealers are sentenced to serve time in Lewisburg, "all you do is change his address and his phone number" by putting him in prison. He stated that drug dealers can conduct business as usual and may even feel a bit more secure behind bars than they did on the street. In addition, he noted that inmates make new criminal contacts while in prison.

Retired FBI Special Agent Dick Rodgers, the Williamsport case agent who handled the Rayful Edmond investigation, stated that he would be surprised if even 25 percent of the inmate calls from Lewisburg were legitimate calls to family and friends. He said that the Edmond case was the "tip of the iceberg." Both Rodgers and Hahn cited several cases with facts similar to the Edmond case, including two involving inmates who used prison telephones to continue large-scale drug rings from USP Lewisburg. Another case they described involved the use of the telephones and mail to conduct a tax fraud scheme from Federal Prison Camp Allenwood. Hahn named an inmate currently incarcerated in Lewisburg who he said is likely running a large drug organization, but who uses other inmates to place his calls in order to avoid detection.

Hahn and Rodgers told the OIG that they were not aware of any significant cases that had been discovered as a result of BOP's telephone monitoring efforts. They said that the FBI's cases in Lewisburg and Allenwood all began with intelligence from some other source – usually an informant. Hahn and Rodgers believed that it is the BOP's job, not the FBI's, to target certain inmates' calls for suspicious activity and refer evidence of criminal conduct to the FBI for investigation. However, both believed that the BOP did not perform this task effectively. They criticized the BOP's current

policy of unlimited telephone privileges for inmates, especially at the penitentiary level. They think privileges should be sharply restricted, with inmates limited to a maximum of ten 15-minute calls a month.

B. Survey of FBI Field Offices

The OIG also requested information from FBI field offices regarding any cases they had investigated that involved abuse of telephones by federal inmates. The 16 divisions that responded reported 44 investigations between 1996 and 1998. Of these 44 cases, 27 involved introduction of narcotics into an institution arranged in advance by telephone; 11 involved drug conspiracies outside prison being conducted by telephone by inmates from inside prison; 2 involved financial fraud; and 1 involved bribery and obstruction of justice using the telephone.²⁴ As discussed previously, the FBI records are not indexed according to whether a prison telephone was used. These reports are therefore based on the memories of the reporting officials. Some examples of cases they reported include:

1. The Dallas Division successfully prosecuted an inmate, his spouse, and another individual for introducing drugs into FCI Seagoville, Texas. The inmate used coded language in telephone calls to his spouse to arrange deliveries of ten grams of heroin at a time. A pending case in this division also involves a scheme in which an inmate used coded language in telephone calls to his girlfriend to arrange drug deliveries into the FCI.
2. The Jacksonville Division reported two cases. The first involved an investigation of inmates using the prison telephones to conduct telephone fraud schemes involving securities. The second investigation involved bribery, obstruction of justice, and international money laundering. In this investigation, the FBI uncovered numerous third-party calls from the inmate to co-conspirators using a coded language, as well as calls to inmates at other institutions.

²⁴ Because the remaining three investigations are ongoing, details were not provided by the FBI.

3. The Oklahoma City Division discovered the involvement of an inmate at FCI El Reno in a drug ring. Subsequent monitoring of the inmate's telephone calls by the BOP revealed that he was using prison telephones to further illegal drug transactions both inside and outside prison.

[For a full summary of the cases reported by the FBI, see Appendix 3.]

V. DEA Information

Similar to our query of the FBI, we asked the DEA to provide us with information about drug cases it has investigated that involved federal inmates' use of prison telephones. In response, DEA Headquarters sent a memorandum to all field offices requesting that they identify such cases. Eleven out of 21 DEA offices responded. However, because of the way in which the DEA collected its information, it was not possible to identify all of the cases that DEA handles which involve BOP inmates or the use of prison telephones.

The DEA field offices reported 12 cases at federal facilities and 13 cases in which federal prisoners housed temporarily at state or local facilities used the telephones to commit crimes. According to the DEA, none of the inmates' criminal activity was detected by the BOP. The DEA responses indicated that restrictions were placed on the inmates' telephone privileges in only 2 of the 12 cases after discovery of the criminal activity. For example:

1. An inmate in FPC Yankton, South Dakota used prison telephones to direct his wife to continue methamphetamine and cocaine transactions and laundering of drug proceeds. The BOP was not aware of the inmate's activities and his telephone privileges were not restricted after the inmate was indicted.
2. An inmate at FCI Ray Brook used prison telephones to contact cocaine and heroin suppliers in Cali, Colombia and to coordinate importation of drugs into the United States. The BOP was not aware of the inmate's activities and his telephone privileges were not restricted, even after conviction.
3. An inmate at FCI Fort Dix, New Jersey used prison telephones to arrange multi-kilogram cocaine and heroin deals and transportation of the drugs from New York to Baltimore. The inmate used telephones in

the prison library where he worked. The BOP was unaware of the inmate's activities until advised by the DEA at the conclusion of the investigation. The inmate was not disciplined by the BOP for this activity, but later had his telephone privileges restricted based on unrelated telephone abuse.

The DEA field office in Hawaii made the following comment: Information obtained from previous criminal investigations as well as intelligence information and confidential source debriefings indicate that the majority of incarcerated narcotics traffickers, who assume leadership roles within their respective organizations, remain in contact with co-conspirators and continue to conduct their drug trafficking by use of the detention facility telephones. [For a full summary of the DEA cases, see Appendix 4.]

VI. Surveys of U.S. Attorneys' Offices

A. 1995 USAO Survey

In 1995, following the prosecutions of Rayful Edmond, District of Columbia Assistant United States Attorney Mary Pat Brown conducted an informal e-mail survey of other United States Attorneys' offices asking for information about prosecutions in which inmates had used prison telephones to commit crimes. She received information about approximately 40 such prosecutions. The cases included drug introductions and frauds on fellow inmates, wire fraud, money laundering, obstruction of justice, distribution of heroin and other drugs, bank fraud, conspiracy to commit bank robbery, firearms, and conspiracy to commit terrorist activities. Five of the approximately 40 offenses involved crimes inside a federal correctional facility; the remaining 35 prosecutions concerned inmates involved in offenses committed outside prison. Only 5 of the cases were initiated by the BOP; 27 were initiated by other law enforcement agencies; and it was unclear who initiated the investigation in the remaining 8 prosecutions. [For more detailed information gathered from this survey, see Table 2.]

B. OIG 1998 Survey of USAOs

To supplement the information obtained from the informal 1995 survey, we surveyed all 94 USAOs about prosecutions involving inmates' use of prison telephones. We sought information on the role of the USAOs in the

investigation and prosecution of criminal cases of inmate telephone abuse, the details of the prosecution, and the BOP's role in those cases.

We received responses from 72 of the 94 offices surveyed (78%). Of those responding, 22 said they had not prosecuted any cases involving inmates and telephone use; 15 of these 22 stated that they do not have a federal correctional facility within their judicial district. The remaining 50 responding offices reported 117 prosecutions of inmates using BOP telephones to facilitate a crime. We were able to determine the manner in which the crimes were uncovered in 104 out of the 117 cases. Of those 104, only 28 were discovered by the BOP (less than 26%). Of the 28 cases discovered by the BOP, 22 involved attempted drug introductions into institutions. This was indicative of what we observed to be the SIS's priority – maintaining the security of the institution. The SIS placed far less emphasis on detecting or deterring crimes committed by inmates outside the institutions.

Twenty-nine of the 117 cases charged inmates with drug trafficking offenses outside prison. Several of these cases involved high-level drug dealers who continued to run large and well-organized drug and money laundering organizations from inside prison. For example, one prosecution involved the head of the San Antonio division of the "Mexican Mafia." Another involved the leader of the El Rukn gang in Chicago.²⁵

²⁵ The El Rukn case illustrates the seriousness of the telephone abuse problem. (US v. Leon McAnderson, et al.) In that case, even though Jeff Fort was serving a prison sentence at FCI Bastrop, TX in 1987, he was able to maintain control over the Chicago street gang "El Rukn" from prison through extensive telephone contact with gang members. After hearing that Nation of Islam leader Louis Farrakhan had received \$5 million from the Libyan government, Fort developed a plan to perform acts of terrorism within the United States in return for an annual payment of \$1 million from Libya. In telephone conversations from inside prison, Fort discussed destroying a federal building, blowing up an airplane, killing a Milwaukee alderman, and committing a "killing here and there" with his fellow gang members. Fort instructed gang members to meet with representatives from the Libyan government, which the gang members did on two occasions. Fort also instructed the gang members to purchase a hand-held rocket launcher, which they also did. Fort and several El Rukn gang members were charged in a 50-count indictment for conspiracy to commit terrorist acts, and using the telephone in furtherance of the conspiracy. Fort was convicted and sentenced to an additional 80 years in prison.

Of the 117 cases, 9 included prosecutions for murder or attempted murders arranged by inmates over prison telephones. An additional 10 inmates were prosecuted for schemes to threaten witnesses and 7 for attempts to influence the testimony of witnesses. Twenty-five of the cases involved fraud schemes, many involving credit cards. In another case, an inmate directed by prison telephone a fraudulent employment matching service scheme that involved approximately \$1.6 million. Another inmate used prison telephones to swindle trucking companies out of more than \$100,000. In one case an inmate used prison telephones to attempt to arrange the murder of two witnesses and a judge and to pay for the execution with illegal firearms. Finally, as discussed above, the OIG learned of an investigation in which an inmate is running a call-forwarding business from prison. [For a full listing of the cases reported by the U.S. Attorneys' Offices who answered the OIG survey, see Table 3.]

A federal prosecutor from the Los Angeles USAO who works mostly on prison cases, told the OIG that abuse of the telephone to commit crime is rarely caught by the BOP. He said that the BOP could identify inmates who use the phones to commit serious crime. For example, he said members of the "Aryan Brotherhood," a white supremacist group classified as a "disruptive group" by the BOP, are "poster boys for phone abuse." He said there are only about 30 "made" members of the Aryan Brotherhood in the BOP system, and only about ten of those are truly influential. The prosecutor told the OIG that the BOP could train staff to monitor all calls made by these influential members. He stated that part of the problem is that BOP is a big bureaucracy and does not think creatively, and that BOP staff do not consider themselves law enforcement officers. Their focus, he believes, is not on detecting criminal activity that occurs outside the prison, but rather on keeping the institution running smoothly.

CHAPTER FIVE

OIG CASE STUDIES OF INMATE TELEPHONE ABUSE

During our investigation we reviewed in detail several cases in which inmates were prosecuted for crimes using prison telephones. We first examine the activities of Rayful Edmond III and three inmates who were involved with Edmond's drug trafficking – Jose Naranjo, Freddy Aguilera, and Nelson Garcia. All of them conducted drug trafficking activities from prison. Next, we examine the case of Anthony Jones, an inmate at Allenwood's Low Security Facility who successfully ordered the murder of a witness over the telephone from that facility. We then focus on Oreste Abbamonte, an inmate twice convicted for dealing drugs using prison telephones, yet someone who still retains full telephone privileges. We also describe the BOP's actions in these cases, and their response to evidence of criminal activities conducted over the telephone by these inmates. After addressing these cases, we then describe our review of prison files of four other inmates, whose convictions received significant publicity, to determine what telephone restrictions, if any, the BOP imposed on them.

I. Rayful Edmond III and Related Cases

A. Rayful Edmond III

In September 1989, Rayful Edmond III was convicted in U.S. District Court in Washington, D.C. on charges of running a continuing criminal enterprise. Prosecutors characterized Edmond's drug organization as a sophisticated enterprise that moved thousands of kilograms of cocaine with a street value of \$15 million onto Washington, D.C. streets between 1987 and 1989. Prosecutors alleged that Edmond controlled as much as 30 percent of Washington's cocaine market. His drug organization was linked to 30 homicides. Edmond's case received significant regional and national publicity. In September 1990, Edmond was sentenced to life in prison without the possibility of parole.

Edmond entered BOP custody on February 16, 1990 at USP Marion. On September 27, 1990, he was transferred to USP Lewisburg, a high security institution in central Pennsylvania, with approximately 1,000 inmates. At that

time, Lewisburg did not have the ITS system and inmates made collect calls. At Lewisburg, Edmond was given a job assignment as an orderly.

On October 21, 1990 – less than a month after entering Lewisburg – a telephone monitor who listened to one of Edmond's telephone calls submitted a written report to the SIS office in Lewisburg that “Edmond was talking to Squirrel about what seemed to be drug deals.” The SIS report stated that “Edmond says just because he is locked up doesn't mean he can't get what he needs.” The report also noted that Edmond was on the “hot list” at the time, a list of inmates that deserve special attention from the SIS.

After receiving the report from the officer, the SIS Lieutenant in the Lewisburg SIS office made a note to the file on November 1, 1990, indicating that he needed to consult with the FBI regarding what appeared to be continuing drug activity by Edmond. The SIS Lieutenant reported to us that he was confident that he consulted with FBI Special Agent Richard Rodgers – an FBI agent assigned at that time to investigate criminal activity at Lewisburg – within a few days of when he made the note to the file. The SIS Lieutenant stated that because of his knowledge of Edmond's extensive drug dealing history, he spoke with Rodgers about “what to watch for and how to proceed” with monitoring Edmond's activities. The SIS Lieutenant told the OIG that Rodgers advised him to keep a close watch on Edmond and report any additional suspicious activity to him.

The SIS Lieutenant told the OIG that he does not recall uncovering any additional suspicious activity by Edmond or consulting with the FBI about Edmond on any other occasion. There is no record of continuing consultations with Rodgers in BOP files, nor did Rodgers recall, when interviewed by the OIG, receiving any additional information from the SIS Lieutenant or anyone else in the BOP about Edmond's possible drug activity from prison.

However, according to an undated chronology prepared by the BOP and provided to us, the SIS office at Lewisburg picked up “continuing intelligence on Rayful Edmond utilizing phones to continue drug trafficking operations.” The chronology does not note the nature of the intelligence, but states that the information was forwarded to the BOP's Intelligence Section. There is no indication that any such additional information was ever shared with the FBI. The BOP chronology also indicates that on December 17, 1990, and January 19, 1991, telephone monitors wrote additional telephone monitoring reports

about suspicious activity by Edmond. Although the BOP chronology states that the "investigation continues," the SIS Lieutenant could not describe for us the details of this investigation or any steps the BOP took to notify the FBI of continuing drug activity by Edmond.

Edmond was never punished for any of these telephone calls, despite the fact that the BOP noted that many of Edmond's calls from prison were three-way calls that are prohibited under BOP regulations.

In a memorandum he later wrote to his supervisors, Rodgers stated that he did not recall any FBI investigation of Edmond at Lewisburg prior to the investigation the FBI began in August 1991, which was based on information from an informant. Rodgers told the OIG that it was "entirely probable" that the suspicious call by Edmond in 1990 had been brought to his attention. However, Rodgers said that the BOP did not ask the FBI to open an investigation of Edmond and, based on the single telephone call noted by the BOP, Rodgers would not have opened an investigation.

Rodgers also told the OIG that he was unaware of Edmond's criminal background in 1990. He wrote in a memorandum that: "At the time, Rayful Edmond was not perceived by me to be any significant criminal individual in which the FBI may have had an interest, as he had just been sentenced to prison. He was simply one of many drug dealers, even large-scale drug dealers, who was confined at the USP, Lewisburg. . . ." Rodgers told the OIG that the approximately 1,200 inmates housed at Lewisburg place more than 80,000 calls a month. Given this volume of calls, Rodgers said the FBI would generally not open an investigation based on a single suspicious call by an inmate.

1. FBI Investigation of Edmond

In August 1991, a former FBI informant incarcerated at Lewisburg contacted the FBI in Washington, D.C., to report that Edmond was dealing cocaine from prison. Based on this information, Rodgers and other FBI agents obtained copies of Edmond's previously recorded telephone calls from Lewisburg. In April 1992, the FBI and the Washington, D.C. Metropolitan Police Department began six months of court-authorized interceptions of the telephones in Edmond's cellblock. During this time, the FBI learned that Edmond was arranging drug deals from prison through Colombian suppliers

that he had met in Lewisburg. One of these former inmates was Osvaldo Trujillo-Blanco, who upon his release from Lewisburg had become Edmond's main drug supplier.

In October 1992, Trujillo-Blanco was assassinated in Colombia, thus cutting off Edmond's supply of cocaine. Consequently, the FBI suspended its investigation of Edmond and refocused its attention on remaining coconspirators. Thereafter, the U.S. Attorneys' Offices for both the District of Columbia and the Middle District of Pennsylvania (MDPA) decided that, based on the evidence that had been accumulated at the time, it was unlikely that Edmond would be indicted on new charges stemming from his activities in prison. The MDPA USAO turned the matter over to the warden at Lewisburg, informing him in a November 19, 1992 letter that Edmond had used prison telephones two or more hours a day to conduct drug deals involving former Lewisburg inmates now living in Medellin, Colombia. Attached to the letter was a court order dated November 10, 1992, which permitted the MDPA USAO to disclose wiretap information to the BOP "for use in connection with the administration of prisons and inmates therein."

According to the records we reviewed and interviews with prosecutors, the BOP did not respond to the letter from the MDPA USAO. The Lewisburg SIS and the BOP apparently did not request any wiretap information the FBI had accumulated on Edmond or open any investigation of him. Nor did the BOP take any action to discipline Edmond or restrict his calling privileges in any way, even though, according to federal prosecutors from the D.C. USAO, they had received informal assurances from SIS staff at Lewisburg that the BOP would take action against Edmond.

In April 1994, an inmate who had been transferred to Lewisburg informed the FBI that Edmond was continuing to broker cocaine deals from prison involving Washington-area drug dealers. Shortly thereafter, the FBI began using the informant in an undercover operation targeting Edmond and other USP Lewisburg inmates, Nelson Garcia and Cali-cartel leader Freddie Aguilera, who were running a cocaine importation ring from prison. After extensive investigation and the seizure of a multi-kilogram cocaine shipment near Newark International Airport, the FBI and the U.S. Attorneys investigating the case requested that BOP officials remove Edmond, Nelson and Garcia from the Lewisburg population in order to conduct searches of their prison cells. While held in temporary segregation, the FBI confronted Edmond

with evidence of his drug trafficking activity in prison. Edmond offered to cooperate with law enforcement officials.

The FBI applied to the Department of Justice for approval to use Edmond in undercover operations at Lewisburg. Garcia and Edmond were subsequently returned to Lewisburg but held in segregation. According to prosecutors from the D.C. USAO, the warden and the SIS office at Lewisburg initially agreed that it was safe to return Edmond to the general population. However, BOP Headquarters opposed the use of Edmond in any investigation and even considered transferring him to USP Leavenworth. The BOP told us that it objected to allowing Edmond to cooperate based on concerns for Edmond's safety, as well as for the safe and orderly running of the prison. The ensuing dispute between the BOP and the prosecutors handling the investigation was acrimonious, with prosecutors charging that the BOP was obstructing the criminal investigation. The disagreement was referred to Principal Associate Deputy Attorney General Merrick Garland, who overruled the BOP and had Edmond sign a release in November 1994 stating that he believed himself to be safe in the general population in Lewisburg.

Edmond was returned to Lewisburg and cooperated in investigations of drug trafficking in and out of prison. Edmond's cooperation resulted in numerous arrests and indictments and convictions of drug traffickers, including the indictment of six persons in Williamsport, Pennsylvania, and the arrests of ten others in Washington, D.C. Two of the drug traffickers arrested with Edmond's help were Freddy Aguilera and Nelson Garcia, inmates serving long drug-related sentences in Lewisburg with Edmond. Their cases are discussed below.

2. The OIG Interview of Edmond

The OIG arranged to interview Edmond on May 28, 1998, in the D.C. courthouse's holding cell about his use of prison telephones. Edmond told us that during his six-year stay at Lewisburg, the institution only had collect calling and inmates could call anyone who would accept the charges. He said telephones were available between the hours of 6:30 a.m. and 11:00 p.m. daily. While most inmates did not have access to telephones during their work assignments (which typically ended at 3:00 p.m.), he said that some inmates – himself included – worked as orderlies within the housing units and had access to telephones throughout the day.

Edmond said that during his incarceration at Lewisburg he talked on the telephone "all day long" and made arrangements for drug deals on the telephone almost every day, including by participating in conference calls to Colombia.²⁶ Edmond claimed that he arranged to have drugs brought into Lewisburg 50 or 60 times. He estimated that almost half of Lewisburg's inmates were involved in bringing drugs into the institution, claiming that inmates used each other's friends to deliver the drugs. He said that most of these drug deals were arranged by telephone. According to Edmond, more than half of inmates' telephone use is for "doing wrong," not for staying in contact with their families.

Edmond said that he had little concern about conducting drug deals on prison telephones because he knew that most calls were not being monitored. He believed that his recorded calls would only be listened to if prison officers had other intelligence that gave them a reason to listen to the calls. Edmond also said he was not concerned because he knew that the telephones were monitored for the internal security of the prison and not to prevent inmates from dealing drugs on the outside. At worst, he thought he would lose his telephone privileges for a short period of time or be put in the special housing unit if he were caught violating the BOP's telephone rules. He said the prospect of these light punishments did nothing to deter him or other inmates from using prison telephones to arrange drug transactions. Edmond said that he never received any disciplinary sanction for telephone abuse, nor has he seen any other inmates disciplined for telephone abuse.

Edmond said that even if his conversations were monitored, the guards would not know that he was conducting drug deals because they had no "street

²⁶ The BOP has argued that Edmond had constant access to the telephones because the BOP was cooperating with the FBI in a covert action using Edmond as a cooperator and that it purposely did not take any disciplinary action against him as a result of his cooperation with government officials. This statement is highly misleading. Edmond used the telephone to conduct drug transactions from October 1990 to July 1994 and was not disciplined in any way despite a request from the U.S. Attorney for the Middle District of Pennsylvania to do so. He was not cooperating with law enforcement during this period. Edmond did not begin cooperating with the FBI until July 1994. Edmond's use of the telephone in the four years prior to his cooperation, not his use of the telephone after he began to cooperate with law enforcement, is at issue here.

knowledge." He said that the rookie guards and the guards working in prisons located in rural areas who have had no contact with the urban environment were particularly unfamiliar with the language used in such telephone conversations. He said that within a two-hour telephone conversation the details of a drug deal may be expressed in ten seconds. Edmond gave the following example: "You should see my new girlfriend. She is six feet tall. She lives down where we used to live on 22nd street." This seemingly innocuous statement meant that he had six kilos of cocaine to sell for \$22,000.

According to Edmond, it typically took 10 to 15 telephone calls over two days to arrange a drug delivery into the institution. Bits of necessary information were passed through multiple calls to make arrangements, confirm details, and check on the people involved. Edmond said that if inmates' telephone calls were limited to two per week, it would have been difficult or impossible for him to conduct his drug activity.

Edmond said that some of the telephones at Lewisburg were also monitored by video cameras, but that inmates learned which cameras were broken because fights and stabbings that occurred in view of the cameras did not result in any disciplinary action. Similarly, he said that the monitoring cameras in the visiting rooms were easily avoided because the inmates knew where the blind spots were and visitors and inmates passed drugs in those parts of the room.²⁷

Edmond told the OIG that inmates at different BOP institutions pass information to each other through transferred inmates and sometimes through conference calls and three-way calls. He said that although inmates are prohibited from talking by telephone to inmates at other institutions, "if something big happened at Lompoc, we would know about it at Lewisburg within the hour" through such prohibited calls.

²⁷ Edmond said inmates also used the mail to pass money and drugs in and out of the institution, often taped inside the binder of magazines. Inmates also knew that mail marked as "certified mail" or "legal mail" would not be opened by BOP staff. The BOP told us that it is their policy to open certified mail and that they open legal mail in the presence of an inmate.

According to Edmond, inmates have a significant amount of control in prison, and it is crucial for the correctional officers and the SIS to foster good relationships with the inmate leadership in order to maintain a stable environment. As a consequence, some guards in the housing units would allow inmates to use their staff telephones. Edmond said some guards would attach a portable tape recorder to record these inmate conversations, but others would not.

B. Jose Naranjo

Jose Naranjo was first convicted in September 1979, in the United States District Court for the Eastern District of New York, for conspiracy to distribute cocaine and possession of a firearm. Naranjo had been arrested in the Bronx, New York, in possession of 153 grams of cocaine and two handguns. In October 1979, Naranjo was also convicted of possession with intent to distribute cocaine and failure to appear in the Southern District of New York. Naranjo was sentenced to a term of 12 years on the first offense and five years on the second.

In 1983, while serving his sentence at FCI Otisville, New York, he and another inmate took part in a conspiracy to import 650 pounds of cocaine from Colombia, South America, to North Carolina. Using the telephone and other contacts, Naranjo was able to locate a pilot to transport the cocaine into the United States. For that crime, Naranjo was tried and convicted in the Middle District of North Carolina. At the same time, Naranjo also was convicted for arranging to have contacts outside of prison travel from New York to North Carolina with five kilograms of cocaine. He was sentenced to 26 years on the first charge and 15 years on the second.

After the convictions stemming from his activities in FCI Otisville, Naranjo was transferred to FCI Petersburg, Virginia. According to the D.C. U.S. Attorney's Office, while in Petersburg, he engaged in at least four other narcotics conspiracies, each one using the telephone and the mail. The first conspiracy was an arrangement by Naranjo for his wife to supply five kilograms of cocaine to an undercover agent outside the prison. Naranjo's wife became suspicious and did not go forward with the transaction. In the second conspiracy, Naranjo introduced his wife to a well-known D.C. drug dealer in the visiting room at FCI Petersburg. According to the D.C. USAO, from 1990 to 1992, Naranjo and his wife routinely arranged to supply the D.C.

drug dealer with multiple kilograms of cocaine, the largest known shipment being 76 kilograms. Naranjo kept in contact with both his wife and the D.C. drug dealer using the prison telephones, mail, and visiting room. Third, in 1991 and 1992 Naranjo arranged for a Petersburg inmate who was to be released from prison to provide protection for his wife in her New York City-based drug distribution network. The inmate cooperated with the FBI and Naranjo's wife was arrested and convicted of conspiracy to distribute cocaine and heroin in the Southern District of New York. She was sentenced to 121 months in prison.

Fourth, after his wife's arrest, Naranjo turned to the D.C. drug dealer to help him keep his drug distribution network going. Naranjo would contact the D.C. drug dealer by telephone, who in turn would place conference calls to Naranjo's suppliers in Colombia and throughout the U.S. Through these contacts, Naranjo arranged to have a supplier come to the U.S. illegally to set up a cocaine "pipeline" that would regularly supply multiple kilograms of cocaine to the Washington, D.C. area. Naranjo also enlisted the aid of his cellmate for help in obtaining funds to purchase the cocaine and in locating purchasers for the cocaine. Naranjo and his cellmate used the telephone to talk with the cellmate's contacts on the outside and introduced one of those contacts to a New York heroin supplier.

In December 1992, the D.C. drug dealer, who had also been part of Rayful Edmond's Washington, D.C. drug trafficking operation, was arrested and began to cooperate with the FBI. As a result, the FBI began to investigate Naranjo. The FBI arrested Naranjo and six others in November 1993 for the fourth conspiracy Naranjo was involved in at Petersburg, as described above.

In April 1995 Naranjo was convicted of conspiracy to distribute cocaine and was sentenced in July 1995 to life in prison. At Naranjo's sentencing, U.S. District Court Judge Thomas F. Hogan recommended that the BOP "have some type of controls on the misuse of telephones by prisoners."

In August 1995, D.C. prosecutors met with BOP officials to discuss administrative and legislative responses to the problems raised by the Edmond and Naranjo cases. According to prosecutors, the BOP insisted that telephone and mail abuse by Naranjo could and should be met with nothing more than suspension of privileges for 60 to 90 days or transfer of the inmate. At the meeting, the BOP's Chief of Intelligence, Craig Trout, agreed to consider such

sanctions if prosecutors could outline in writing the nature and extent of Naranjo's conduct.

In a letter dated August 15, 1995, D.C. Assistant U.S. Attorney (AUSA) Mary Pat Brown wrote to Craig Trout detailing Naranjo's five prior convictions involving drug trafficking. The letter also described Naranjo's illegal conduct while serving time for drug trafficking at FCI Otisville in 1983. The letter stated that, even after indictment in the most recent case, Naranjo had attempted to engage in drug trafficking using the telephone from the Prince William County Adult Detention Center, where he had been held pending trial. The letter explained that, while housed in the Detention Center, Naranjo was not allowed physical contact with any visitors (other than his attorney and representatives of the Colombian Embassy), or other prisoners, and was not allowed to use the telephone. Still, Naranjo managed to make contact with another inmate and asked him to make telephone calls for him. He also managed to write letters to another Washington-area drug dealer who was a former inmate at FCI Petersburg. He also told the inmate that he had contracted to kill the D.C. drug dealer, and he tried to recruit the inmate to sell cocaine for him when the inmate was released from prison.

Brown's letter concluded that despite the fact that Naranjo had been incarcerated for the past 16 years, he was able to continue his criminal activities unabated. The letter urged the BOP to "prohibit Naranjo's use of prison telephones altogether (with the exception of attorney-client calls), to screen his correspondence, and to permit only non-contact visits."

Despite the fact that Naranjo had been convicted for activities from Petersburg, he was returned to FCI Petersburg after his sentencing in late August 1995. The following month, AUSA Brown wrote to the SIS staff at Petersburg detailing the acts for which Naranjo had been indicted, tried, and convicted in his most recent case. Based on these acts, the SIS at Petersburg filed disciplinary charges against Naranjo and he was transferred to USP Florence in October 1995. In January 1996, Naranjo was found guilty of these administrative charges and lost five years of visiting privileges, 14 months of telephone privileges, and was placed in segregation for 90 days.

On February 6, 1996, USP Florence warden Joel H. Knowles wrote Judge Hogan thanking him for his recommendation on Naranjo's judgment and commitment order in reply to Hogan's July 1995 sentencing remarks. Warden

Knowles wrote that, due to the number of inmates incarcerated at each BOP facility, it is not possible to monitor every call of every inmate and monitoring is therefore random. However, because of Naranjo's history of telephone abuse, the SIS Office had been notified of the need to monitor his calls more carefully.

During our review, in November 1998 we asked officials at USP Florence whether Naranjo's telephone communications currently receive any special attention. Naranjo's telephone privileges were restored in March 1998. We were surprised to learn that, despite Naranjo's history of telephone abuse and the warden's assurances to Judge Hogan, the SIS has made no special effort to monitor Naranjo's telephone calls or mail. In fact, the prison telephone system has not even been programmed to alert BOP staff when Naranjo used the telephone.²⁸

C. Freddy Aguilera and Nelson Garcia

Freddy Aguilera, a major international drug trafficker and member of the Cali Cartel, has been characterized by federal prosecutors and the DEA as one of the most significant drug traffickers currently incarcerated in the United States. He established and ran cocaine processing plants in Orange, New Jersey; Gibsonville, North Carolina; and Minden, New York to process Colombian cocaine. While the labs were operating, Aguilera controlled an organization that sold \$166 million of cocaine every week.

Aguilera was tried and convicted in three jurisdictions based on these activities. Aguilera was first convicted of conspiracy to distribute cocaine in July 1988 in the Southern District of Florida. He was sentenced to 30 years in prison. He was next convicted in the Northern District of New York for running a continuing criminal enterprise, based on his running of a cocaine laboratory on a farm in Minden, New York. Authorities discovered the laboratory in April 1985 after an explosion and fire there and learned from codefendants that approximately 1,500 kilograms of cocaine had been produced there in the preceding nine days. In August 1989, Aguilera was

²⁸ According to the BOP, since the time of our inquiry about Naranjo's status, he has been entered into the SENTRY system under the STG phone abuse category and has been placed on alert in ITS.

sentenced to 30 years for this offense, to run consecutively with the 30 year sentence he received in Florida. Finally, Aguilera was convicted of conspiracy to manufacture cocaine with the intent to distribute in the Middle District of North Carolina. Authorities estimated that 200 to 300 kilograms of cocaine had been manufactured at Aguilera's cocaine lab in Gibsonville, North Carolina. In June 1990, Aguilera was sentenced to 15 years on that charge, to run concurrently with the sentence in the Northern District of New York. Aguilera was incarcerated in USP Lewisburg.

Aguilera continued his drug trafficking activities at Lewisburg. As noted above, in 1994 Edmond began cooperating with the government. Based on Edmond's cooperation, in September 1996 Aguilera was indicted on drug conspiracy charges for drug trafficking activities from Lewisburg. The indictment alleged that Edmond had introduced cocaine purchasers to Aguilera's agents and couriers outside of prison, who maintained Aguilera's contacts with Colombian cocaine production facilities. Aguilera used the telephones and the visiting room to plan and direct couriers to supply cocaine shipped from Colombia to Edmond's contacts in the U.S.

In March 1997, Aguilera was convicted for his drug activities in Lewisburg and later that year was sentenced to life in prison in addition to the 60-year (aggregate) sentence he was already serving for his four prior convictions.

Nelson Garcia was also serving a lengthy prison term in Lewisburg for taking part in a continuing criminal drug enterprise. Based on Edmond's cooperation, Garcia was indicted in September for his participation in a drug conspiracy at Lewisburg with Aguilera. Garcia was convicted in March 1997 and was sentenced to life in prison.

The BOP originally planned to house both Aguilera and Garcia in Lewisburg, even after their convictions in March 1997. However, after much protest by the D.C. USAO, the warden at Lewisburg intervened and requested that Aguilera be re-designated or transferred based on his need for close supervision. In addition, on September 8, 1997, John Dominguez, the D.C. AUSA who had prosecuted the March 1997 case against Aguilera and Garcia, wrote to the head of BOP's Correctional Programs Branch requesting that the BOP transfer both Aguilera and Garcia to a prison institution with a higher security level and to "implement measures to prevent [these inmates] from

using inmate telephone, mail, and visitation privileges to engage in criminal conduct.”

Based on the warden’s and the AUSA intervention, Garcia and Aguilera were transferred to USP Marion in October 1997. According to prosecutors, the two were not eligible for the BOP’s most secure facility, Administrative-Maximum (ADX) Florence, Colorado, because they had never incurred any BOP disciplinary infractions despite their criminal convictions for activities in prison.

According to prison officials at Marion, Aguilera lost his mail and telephone privileges for a year as a result of the drug dealing in Lewisburg. Currently, all of Aguilera’s and Garcia’s calls are live monitored. In addition, Aguilera is only permitted to call his mother and his sister.

Finally, we also discovered a troubling incident with regard to the BOP’s handling of Aguilera’s mail when he was housed at USP Allenwood prior to his March 1997 trial. After the trial was completed, the SIS office at Allenwood turned over to the FBI copies of what they believed to be suspicious correspondence that Aguilera had mailed from Allenwood. Despite the SIS’s suspicions, they had allowed the letters to be mailed. The FBI translated the letters from Spanish and discovered threats to cooperating witnesses, law enforcement officials, prosecutors, and others. In one letter, Aguilera had requested that the recipient hire “two or three well paid investigators” to “find these beauties” and “then from there, one or two good ‘erasers’ of class.” Aguilera also sent a detailed map of the courtroom diagramming where the judge, jury, defendants, defense attorneys, prosecutor, U.S. Marshals, and other law enforcement were located and indicated that he would be sentenced on May 29, 1997 -- suggesting that he was plotting courtroom murders. Upon learning of this correspondence, AUSA Dominguez of the D.C. USAO requested an immediate restriction of Aguilera’s privileges, including telephone, mail, and visiting privileges.

Upon receipt of the Dominguez’s request, the warden at Allenwood agreed to restrict Aguilera’s mail, visiting, and telephone privileges pending an internal disciplinary hearing. After the hearing, Aguilera received 30 days in disciplinary segregation and loss of visiting, mail, and telephone privileges for a year.

Aguilera was confined in a cellblock with seven other inmates and was caught attempting to send mail through the other inmates. He was moved to the hospital ward and completely segregated, but was caught trying to throw a letter out the window to a trustee below who was mowing the lawn. When the OIG reviewed his case in October 1998, Aguilera's mail privileges had been restored at USP Marion.²⁹

D. OIG Conclusions About the BOP's Handling of Edmond, Naranjo, Aguilera, and Garcia

We concluded that the BOP failed to adequately monitor or investigate Edmond's use of prison phones, which enabled him to continue his drug trafficking while incarcerated. It was the BOP's responsibility – not the FBI's – to monitor Edmond. The FBI made this point to the BOP, but the BOP failed to adequately monitor Edmond's telephone calls, even after receiving a letter from the U.S. Attorney for the MDPA regarding wiretaps of Edmond's phones and requesting that the BOP handle the matter appropriately.

In our interviews with BOP officials, they argued that the BOP adequately discharged its duties when it referred to the FBI the suspicious call made by Edmond on October 21, 1990. We do not agree. A single monitoring report that described "what seemed to be drug deals" viewed in the context of the volume of calls at Lewisburg and the number of monitoring reports containing suspicious calls generated in a single day is not enough information for the FBI to open an investigation. Responsibility for continued monitoring of Edmond's activities lay with the SIS office, not the FBI. The SIS Lieutenant acknowledged that Rodgers told the SIS to continue to monitor Edmond and to report any additional activity. The SIS did not do so.

In the Naranjo case, we also found that the BOP failed to take sufficient action until pressured to do so by prosecutors and the sentencing judge. Naranjo has been convicted of committing three crimes while incarcerated in BOP facilities. He is serving a life sentence and has no hope of release. Despite this, he now has full telephone privileges, after a suspension of only

²⁹ The BOP informed the OIG that, since the time of our initial investigation, Garcia and Aguilera have been placed in the SENTRY system under the STG phone abuse category.

one year, and his calls receive no special attention by prison officials.³⁰ The warden at USP Florence told the sentencing judge that monitoring each call made by every inmate is not possible. While this may be true, it is certainly possible to monitor all calls made by inmates of particular concern. Naranjo clearly fits in this category. An alert could be easily put into ITS to notify BOP staff whenever Naranjo attempts to use the telephone, and all his calls could be monitored.

The BOP handled the cases of Garcia and Aguilera more appropriately, but this was due largely to the persistence of the prosecutors who handled their cases. Both Garcia and Aguilera are currently housed at USP Marion where 100 percent of their telephone calls are monitored and their incoming and outgoing mail is reviewed. We believe, however, that the BOP needs to ensure that strict monitoring continues should they be transferred to a less secure facility.

Because of these cases, FBI agents and prosecutors from the District of Columbia met with BOP officials to discuss possible administrative and legislative responses to the serious systemic problems illustrated by these prosecutions. According to a memorandum written by a prosecutor who attended that meeting, the BOP maintained at the meeting that: (1) inmate abuse of telephone privileges was not widespread and could be addressed through the random monitoring system; (2) the BOP is responsible for policing its "community" of inmates and not for detecting and preventing crimes outside the prison; (3) abuse of telephone, mail, and visiting privileges should be dealt with by a suspension of privileges for not more than 60 to 90 days or by transferring the inmate to another facility.

The BOP's former Chief of Intelligence, Craig Trout, had a different recollection of the meeting. He said that he made his position clear that BOP has an "interest in taking disciplinary action against such inmates, to include loss of phone privileges, but stressed that we would need to be advised of specific details on which to base our charges." He stated that he received a negative reaction in response to his overture towards improved information sharing from the FBI, but he "dismissed it in my mind as inconsistent with

³⁰ As discussed above, the BOP took steps to correct this problem after the OIG began its review of this matter.

what I had always understood to be the FBI Headquarters position on matters involving agency level FBI-BOP liaison."

We did not attempt to resolve this difference in opinion as to the outcome of that meeting. However, we found in our interviews an attitude by some BOP officials similar to that described in the memorandum by the prosecutor about the meeting between BOP officials and D.C. prosecutors, i.e., that inmate telephone abuse is not a widespread problem.

II. Anthony Jones

A. Background

Anthony Jones was a notorious drug dealer in East Baltimore, Maryland, who ran a large drug organization that allegedly sold over \$30,000 a day worth of cocaine and heroin. The organization was also violent, allegedly committing more than ten murders, including one in which a man was set on fire.

Jones was arrested in February 1996 for being a felon in possession of a firearm. He was also indicted on drug conspiracy charges in April 1996. He was convicted of the felon in possession charge on September 25, 1996. On November 22, 1996, he received a 37-month sentence and was sent to the low security facility at Allenwood. While Jones was in federal custody, the Maryland U.S. Attorney's Office continued its grand jury investigation into Jones' drug conspiracy, planning to supersede the indictment filed in April 1996. This investigation included subpoenas to witnesses and co-conspirators in Jones' drug trafficking organization. Jones became aware of the investigation and also became aware that potential witnesses had been approached by law enforcement to testify against him. Jones used coded language over prison telephones to order his associates to murder two men who he suspected had testified against him. One of the men was killed, the other was shot several times and survived.

Jones was then charged under federal racketeering and drug conspiracy statutes for his drug trafficking activities and for the three murders he committed while running his organization and for conspiracy to retaliate against witnesses from prison, including murder and attempted murder of witnesses. The government sought the death penalty. On May 27, 1998, Jones

was convicted on all charges but the jury declined to impose the death penalty. He received a sentence of life without parole.

During the course of the OIG's review of the way the BOP handled Jones' case, we learned that even after Jones had been convicted in 1998 of ordering a witness's murder through the use of the prison telephones, the BOP did not restrict his telephone and visiting privileges, did not enter his name into their central database as a telephone abuser, did not place him in segregation, and did not even write an incident report or administratively sanction him. In fact, as we describe below, the BOP took no action regarding Jones' privileges until notified by the OIG in the course of our review that Jones continued to enjoy full telephone privileges.

B. Facts of Jones' Case

As noted above, Jones was convicted of being a felon in possession of a firearm and was sent to the Low Security Facility at Allenwood on December 16, 1996. When he arrived at Allenwood, his file contained information alerting the BOP to his criminal activities that extended well beyond his conviction for being caught with a firearm. Jones' file includes a memorandum, dated April 1, 1996, from District of Maryland AUSA Jamie Bennett to the United States Marshal Service (USMS), in which she noted allegations that Anthony Jones had shot one person and was searching for another to kidnap and murder in connection with his drug trafficking activities. A second memorandum from AUSA Bennett to the USMS, dated October 10, 1996, included the statement that Jones is "very violent, and will be indicted for homicide."

Upon his arrival in the Low Security Correctional Institute at Allenwood, Jones was placed in administrative detention, as is standard for all arriving inmates, then released to the general population. On January 13, 1997, an incident report was written because he placed a three-way call with his lawyer, then lied about it to a BOP staff member. Disciplinary charges were filed against Jones for telephone abuse and lying, and he received a punishment of 15 hours of extra duty and a loss of commissary privileges for 30 days.

On January 17, 1997, Jones was transferred temporarily from Allenwood on a writ relating to his prosecution on drug conspiracy charges, and he was

returned to Allenwood on February 18, 1997. On February 21, 1997, in a call recorded on the BOP telephone in Allenwood, Jones ordered the murder of his step-brother, John Jones. According to the recorded call, he first used street language called "tergy wergy" to order the murder. In a subsequent recorded conversation, he gave a similar order without code:

But make sure you know they do that shit tonight. Fucking idiots, yea man definitely yo, definitely - ET that nigger John tonight. I um, ain't no, no word you know who else we might have to kill. You know what I'm saying? I ain't lying, we going to have to kill that nigger. He already gave a statement so I ain't really worried about him. The only nigger that told the niggers that money was mine was that nigger John, yo. He's a fucking piece of shit, that's why I say that nigger gotta go.

John Jones was shot and killed on February 26, 1997. Within two weeks of his death, the Maryland USAO, which was handling the investigation of Jones, sent the Allenwood SIS subpoenas for Anthony Jones' prison telephone records. In March 1997, while reviewing Jones' calls, a Baltimore police officer working on the Jones investigation informed the SIS office at Allenwood that the government was planning to seek the death penalty against Jones on charges that he ordered the murder of a federal witness while housed in the county jail temporarily on a writ. The officer said that Jones had later verified this order using the inmate telephone system at Allenwood.

According to the SIS office, it forwarded this information to a BOP attorney on April 1, 1997, and asked whether, based on this information, it could curtail Jones' privileges at Allenwood even though he had not yet been convicted of the alleged murder scheme. The SIS Lieutenant told the OIG that the BOP attorney told the SIS office that she would need more information from the prosecutor handling the case before she could make a determination whether the SIS office could take disciplinary action against Jones.

The U.S. Attorney's Office filed an indictment against Jones for conspiracy and racketeering activities, including the murder of John Jones, shortly after Jones' murder. In response to a request for information from the Allenwood SIS office, on May 6, 1997, AUSA Bennett sent to the Allenwood warden a copy of the indictment. In a letter to the warden accompanying the

indictment, Bennett stated that Jones had orchestrated the murder and an attempted murder from prison, and reported that Jones had made three-way calls from prison and had used a "private language" in his conversations. Bennett also described calls made by Jones instructing associates to "take care" of witnesses that might testify against him. In her letter, Bennett asked the warden to "take appropriate action." Allenwood BOP officials did not immediately curtail Jones' telephone or visiting privileges even after receiving this information, and he remained in the general prison population.

On July 29, 1997, the BOP's Northeast Regional Office sent an electronic mail message to all regional SIS offices reminding them to use the Security Threat Group category in SENTRY to identify inmates using prison telephones for criminal activity. Despite this reminder, Allenwood SIS staff did not enter Jones into the SENTRY database for telephone abuse.

On July 30, 1997, nearly three months after receiving the information from AUSA Bennett, Allenwood officials finally requested that Jones be transferred from the Allenwood Low facility to a more appropriate facility. Jones' case manager requested the transfer to a more secure facility in light of Jones' "pending indictment. . .and inappropriate use of the inmate telephone system to facilitate attacks and murders of several individuals."

Although this request was characterized as a "greater security" transfer request, the Regional Office requested that Allenwood resubmit the request as a "close supervision" transfer. A "greater security" transfer request applies to inmates who, when their security classification is rescored after a new conviction or an incident report, receives a score that places them at a higher security level. The "close supervision" transfer request applies to inmates who, like Jones, have not received a new conviction or incident report, but who need closer monitoring and whose movements should be tracked. A "close supervision" request does not necessarily result in the inmate being transferred to a more secure facility.

On August 19, 1997 the Allenwood SIS office sent a memorandum to the Allenwood warden highlighting the letter from Bennett, comments made by one of the investigating agents about Jones, and Jones' pending trial for an offense that carried the death sentence. The SIS office noted that Jones had been placed in Administrative Detention pending a transfer to a higher security institution.

Jones was removed from Allenwood on August 25, 1997, because of his pending trial on murder, kidnapping, and racketeering charges. Jones' unit manager wrote in the documentation supporting Jones' transfer that "extreme caution should be used when transporting and housing this inmate as he is pending the death penalty for 17 murders which included potential witnesses against him. It is recommended that he be housed alone at all times."

The Allenwood Warden explained in a memorandum to the Northeast Regional Director that the SIS office at Allenwood had not conducted any investigation of Jones and that the re-designation request was based solely on the letter from AUSA Bennett. The Regional office approved Jones' "close supervision" re-designation and re-designated him to Allenwood's medium security facility on September 15, 1997. However, during this time the USMS maintained custody of Jones during his trial in federal court in Baltimore.

On October 30, 1997, a law enforcement agent working on the investigation of Jones returned to the Allenwood Low facility to review more of Jones' telephone calls. After discovering a three-way call involving Jones, the agent reported it to the SIS office. The SIS did not write any incident report for this violation. When questioned by the OIG, the SIS technician explained the lack of a report by saying that at the time there was not much emphasis on telephone abuse by SIS staff at Allenwood.

On May 27, 1998, Jones was convicted in Maryland District Court of murder in aid of racketeering, kidnapping, attempted murder, retaliating against federal witnesses, and drug distribution. His conviction made the front page of the Baltimore Sun. The Baltimore Sun had extensively reported about Jones, writing at least 16 stories about him and his trial.

The BOP staff at the Allenwood Low Security facility told the OIG that around June 11, 1998, they received a telephone call from the USMS in Baltimore asking whether they should return Jones to the Allenwood Low facility pending his sentencing. The Allenwood Low staff checked SENTRY and learned that Jones had been re-designated to the Allenwood Medium facility. They informed the USMS Service of this fact and then collected Jones' files and delivered them to Allenwood Medium.

On June 16, 1998 the USMS delivered Jones to the Allenwood Medium facility. However, it is clear from our interviews with staff at Allenwood Medium that, when Jones arrived at their facility, they were not familiar with his criminal history or recent conviction. After the standard day in Administrative Detention awaiting classification, Jones was released into the general population at Allenwood Medium with no restrictions on his telephone use. This lack of restrictions took place despite the fact that Jones had been assigned to Administrative Detention when he left BOP custody for trial, had faced the death penalty, and was ultimately convicted of numerous charges including murder of federal witnesses facilitated by his use of prison telephones.

The unit team at the Allenwood Medium facility – the team of BOP employees that manage inmates in a particular housing unit – met with Jones twice after his arrival at Allenwood Medium but apparently never reviewed the information in Jones' central file. The unit team is supposed to review such information in preparation for its meetings with inmates. Jones' case manager at Allenwood Medium told the OIG that she found some "sketchy" information about Jones' history at Allenwood Low in the BOP's computerized SENTRY system, including mention of telephone misuse and a murder. But she stated that she was not aware of anything unusual about Jones, and she said that Jones refused to answer her questions about the writ removing him for trial, stating that he was instructed not to answer by his lawyer. The unit team even claimed to be unaware of Jones' 1998 conviction and thought that Jones was going to be released in a couple months after he was sent to Allenwood Medium.

When we began investigating Jones' case in late June 1998, we asked the BOP about Jones' telephone privileges. In early July 1998, we learned that Jones was housed at Allenwood Medium and that he had full telephone privileges. The OIG immediately informed the District of Maryland USAO, which had prosecuted the case against Jones, as well as the BOP that Jones apparently retained full telephone privileges and that staff at Allenwood Medium appeared to be unaware of his recent convictions.

Only after these inquiries from the OIG did the BOP take any action regarding Jones' telephone privileges. On July 10, 1998, Jones was placed in Administrative Detention pending re-classification. On August 14, 1998, the BOP filed and ruled on a disciplinary action against Jones stemming from his

use of the telephone to order the murder of a federal witness and restricted Jones' privileges for ten years.

On August 21, 1998, Jones was sentenced to life in prison on the murder, kidnapping, and racketeering charges. At that time, the USAO moved to restrict Jones' contact with those outside of prison. The court took the motion under consideration. On September 11, 1998, the court ruled on the prosecutors' motion to restrict Jones' privileges and ordered the BOP to ensure that Jones had no contact with other inmates, no telephone privileges other than to contact his two attorneys, and no visiting privileges other than with the attorneys and his mother. Jones was transferred to the Administrative Maximum facility in Florence, Colorado.

C. OIG Conclusions Regarding BOP's Handling of Jones' Case

First, there was enough information in Jones' file that the BOP should have given him additional attention from the day he arrived in federal custody in 1996, even before his 1998 conviction for murder of a witness. AUSA Bennett's communications with BOP staff made it clear that Jones was an inmate who warranted careful scrutiny. Jones did not receive this scrutiny, and used the telephones to order the murder of a witness.

In addition to the BOP's failure to take an aggressive approach to monitoring Jones' use of the telephones before the 1997 murder, the BOP was negligent in its actions after the murder. The SIS staff at Allenwood Low did not properly discipline Jones for his abuse of the telephone system, although specifically requested by the prosecutors to take appropriate action. The Allenwood Low SIS office also failed to charge Jones with any misconduct even though AUSA Bennett wrote to the BOP about his use of the prison telephone to have a witness murdered and his impermissible three-way calls from prison. While prosecutors in this case took special care to keep the BOP apprised of Jones' potential danger to the institution and the community, the BOP did virtually nothing in response to the clear danger posed by Jones' use of the telephones.

In addition, Allenwood Low staff did not enter information about Jones into the SENTRY system that would have enabled institutions to which Jones was sent to quickly ascertain his criminal history and assess his security needs. There was nothing in the SENTRY system to indicate that Jones was charged

with murder and racketeering or that he had been certified for the death penalty. The Allenwood Low SIS staff also failed to enter Jones into SENTRY's phone abuse category, even after they learned of his three-way calls and the murder scheme over the telephone, and despite two reminders from the BOP to place such information in SENTRY. Allenwood Low staff failed to document in Jones' file the reasons why Jones had been segregated into a special housing unit prior to his departure from Allenwood Low for trial on murder and kidnapping charges. Consequently, when Jones was placed in Allenwood Medium after his conviction, he was released into the general population with no restrictions. We believe that the BOP's failures regarding its handling of Jones' case were inexcusable.

III. Oreste Abbamonte

The OIG also reviewed the case of Oreste Abbamonte, a convicted drug dealer prosecuted for crimes he committed using prison telephones while incarcerated in USP Lewisburg. At sentencing, the court ordered limitations on Abbamonte's telephone privileges. The OIG examined his case to see whether any telephone restrictions had, in fact, been imposed. The following describes what we found.

According to prosecutors, Abbamonte spent his entire adult life outside of prison in narcotics distribution. His first conviction was in 1969 on drug charges, followed by a 1973 conviction for his plans to murder a witness. Abbamonte was convicted again in 1993 on heroin distribution conspiracy charges in the Southern District of New York and was sentenced to 25 years in prison. According to the prosecutor in that case, Abbamonte threatened to kill the DEA agent who arrested him. Abbamonte was also sentenced to 13 years, to be served concurrently, for violation of his parole on the 1973 conviction.

In 1986, while imprisoned in Lewisburg, he was indicted under the Continuing Criminal Enterprise statute for orchestrating the distribution of multiple kilograms of heroin from prison. According to the indictment, Abbamonte and a co-defendant used the prison telephones to facilitate this drug trafficking.

In December 1986, he was convicted of the Continuing Criminal Enterprise charges. Following this conviction, the USAO for the Southern District of New York wrote a letter to the Director of the BOP that stated that

Abbamonte's access to Lewisburg's telephones and his ability to receive visitors had enabled him to commit the drug crimes for which he was convicted. The USAO expressed the hope that, in the future, narcotics violators who were apt to try to continue their criminal enterprises while in prison would have special restrictions placed on their use of the telephone and that their visitors would be scrutinized carefully. In response, the Director of the BOP wrote to the USAO that Abbamonte's case demonstrated the need for increased telephone monitoring and expressed the hope that the new inmate telephone system scheduled to be implemented throughout the BOP would prevent this from happening again.

In early 1987, Abbamonte was sentenced to life imprisonment. The Court specifically recommended that Abbamonte never receive parole, that he be confined to the BOP's highest security facility, and, at the urging of the U.S. Attorney's Office, that he have limited telephone privileges. Abbamonte was transferred to USP Marion, the BOP's most secure facility at the time. In 1989, he was transferred to USP Leavenworth because the BOP concluded that Abbamonte's security needs had lessened.

When we reviewed Abbamonte's file from Leavenworth, we found that no special restrictions had been placed on him, nor was there any indication of the fact that the sentencing court had ordered Abbamonte's telephone privileges limited.

In fact, at Leavenworth Abbamonte, other inmates, and a co-conspirator on the outside conspired to purchase 10 kilograms of cocaine. According to the FBI, this drug trafficking was conducted using the prison telephones. In early 1992, Abbamonte pled guilty to three counts of Interstate Travel in Aid of Racketeering, which related to his participation in the conspiracy to purchase the cocaine. He was sentenced to 180 months for this conviction, to be served concurrently with his life sentence. Yet, even after this conviction, the BOP still did not take any disciplinary action against Abbamonte as a result of his misuse of prison telephones.

In April 1992, the BOP transferred Abbamonte to USP Terre Haute. There was no indication in Abbamonte's file that the new facility received any information about his criminal activities while he was incarcerated, or that he had previously used the telephones to engage in criminal activities. In February 1994, Abbamonte was transferred to USP Allenwood because

Allenwood is nearer to his home. At USP Allenwood, Abbamonte was assigned as a unit orderly. When Abbamonte was transferred to Allenwood, the SIS included Abbamonte in its "posted picture file" – a place in the SIS office where pictures of inmates of concern are posted so that SIS officers will be familiar with the inmates. This was done because of Abbamonte's past involvement in drug transactions using the prison telephones. Abbamonte's "posted picture file" summary included his drug activities at USP Lewisburg but did not mention the USP Leavenworth offenses. However, we found that Abbamonte is no longer in the Allenwood SIS's "posted picture file." He is included in the BOP's "hot file" database of inmates of concern because he is alleged to be a member of the Gambino crime family.

We were surprised to find that Abbamonte's telephone privileges are still not limited in any way, despite the court's specific request and his repeated use of the prison telephones to commit crimes. When we reviewed his file in November 1998, it revealed that Abbamonte had 28 people on his "approved" telephone list, but no special investigations had been conducted into the identity or background of these people. There were no alerts placed on his calls, he was not on the telephone monitoring list maintained by the SIS office, and he has not been placed in SENTRY's telephone abuse category. In fact, Abbamonte's current job assignment as an orderly means that he has unlimited access to the telephone during his work rotation since orderly positions are among the least supervised of all inmate jobs.

Abbamonte also has never been charged with any violations of BOP regulations as a result of his having used prison telephones to deal drugs. He has not received any BOP disciplinary sanctions restricting his use of the telephones. When questioned by the OIG about this, the SIS office at Allenwood said that it was not aware of the sentencing judge's request to limit Abbamonte's telephone privileges.

Finally, we learned from law enforcement sources that Abbamonte continues to use the telephone to conduct criminal activities from Allenwood.

In sum, we found the BOP's failure to properly restrict and monitor Abbamonte unjustifiable and extremely troubling. He has twice been convicted of crimes committed from inside prison using BOP telephones. Despite a sentencing judge's specific request to restrict his telephone use, and despite Abbamonte's documented use of prison telephones to deal drugs, as of

December 1998 the BOP has failed to restrict his telephone privileges. His calls are essentially unmonitored and his employment allows him access to the telephone at all hours.³¹

IV. OIG Review of Selected Inmate Files

As part of our investigation, the OIG reviewed the BOP Central Files on four inmates whose crimes had received a great deal of public attention. In addition, these inmates appeared to have the ability to continue their criminal activity while incarcerated. Our purpose was to assess whether the BOP was taking any measures to guard against continued criminal activity by these potentially high-risk inmates. The OIG selected the following inmates for review by randomly picking some high-profile defendants from media reports.

1. Vincente Gigante, the former head of the Genovese crime family in New York City, was convicted on racketeering charges in July 1997. Gigante is currently incarcerated at USMCP Springfield. An alert has been placed on his telephone calls. His calls are monitored live when staffing permits or generally reviewed within 24 hours. The SIS office also generates daily a list of all his calls. Gigante is on the "hot list," the telephone monitoring list, the mail monitoring list, and the visiting room hot list. It appears that the BOP has taken an aggressive approach to monitoring the activities of Vincente Gigante.
2. George Zappola, a member of the Lucchese crime family, is serving 22 years for murder and attempted murder. He was sentenced in 1996. He was initially incarcerated in the MDC Brooklyn where he bribed BOP correctional officers to receive special food, wine, and visitors who would not ordinarily be approved as well as information from BOP computers. The officers who accepted his bribes were prosecuted but Zappola was not. Zappola was subsequently transferred to FCI McKean. The AUSA who prosecuted him wrote a lengthy letter to the warden of McKean outlining Zappola's criminal acts and those of his

³¹ The BOP informed us that, since the time of our inquiry, Abbamonte's telephone privileges have been "reduced," and his job assignment changed. He has also been placed in SENTRY under the STG phone abuse category, been placed on Posted Picture file, and put on alert in ITS.

codefendants, including the murder of six people and his bribery of prison staff at MDC Brooklyn. The AUSA requested that Zappola be separated from other members of the Lucchese crime family in BOP custody, that he be barred from visiting or corresponding with members of the Lucchese family, that he be administratively sanctioned for bribing guards at MDC Brooklyn, and that he be transferred to a more secure facility.

The warden of McKean responded that he would consider separating Zappola from other Lucchese family members; that he had directed his staff to monitor all incoming and outgoing mail and telephone activity by Zappola; and that he had referred the question of administrative discipline for his actions at MDC Brooklyn to the SIS Office for appropriate action. The warden also said that if the AUSA wanted a ban on Zappola's visits and correspondence with Lucchese family members, he should seek a court order banning such contact under 18 U.S.C. Section 3582(d). (This statute will be discussed in detail in Chapter Seven, below.)

Despite the warden's assurances that both Zappola's mail and telephones would be monitored, we found no evidence that they were. Our inquiry to FCI McKean revealed that Zappola was being subjected to mail monitoring, but no correspondence was copied or maintained because no illicit activity was noted. According to Zappola's central file, he was not on telephone monitoring at McKean. In addition, the BOP never took disciplinary action against Zappola for his actions at MDC Brooklyn.

In November 1997, Zappola was transferred to USP Allenwood and placed on that institution's "posted picture" list. When the OIG asked the Allenwood SIS office about Zappola's current status it reported that he is listed in STG categories as an escape risk and a Lucchese crime family suspect. He is not on any hot lists, telephone, mail monitoring, or other lists. There is no alert on Zappola in the ITS system that would notify the SIS when he makes a telephone call. The SIS office was unaware of the AUSA's request for special monitoring of Zappola's calls, letters, and visits. The SIS Office also was unaware of Zappola's

bribery of guards at MDC Brooklyn and no such entry exists in the SENTRY system.³²

Thus, we found that the BOP has not taken a proactive approach to monitoring Zappola despite a specific written request by the prosecutor to do so and despite the fact that Zappola has compromised BOP staff in the past.

3. Darryl Henley is a former professional football player convicted of narcotics trafficking and conspiring to murder a federal judge. In addition, he was convicted in 1996 of arranging a million dollar drug deal from the Los Angeles Metropolitan Detention Center. He arranged this deal using a cellular telephone provided by a BOP correctional officer. He received an additional 235-month sentence. Henley was transferred to USP Marion, one of the most secure BOP facilities, where he is permitted six 15-minute telephone calling periods per month during which he can make as many calls as time allows. USP Marion reported that 100 percent of inmate calls at Marion are live monitored. In addition, Henley's name has been entered into a special database of high-profile inmates that creates a notice for SIS staff that he has made a call. Thus, it appears that as long as Henley remains at USP Marion, he will be properly supervised because of the restrictions and controls that apply to all inmates at that facility.
4. Jorge Cabrera, a narcotics trafficker with ties to the Cali cartel, was convicted of drug conspiracy charges in early 1996 and sentenced to 19 years in prison. His presentence report indicates that he was involved in a continuing criminal enterprise to import cocaine and was also considered a major marijuana importer. According to the SIS Office at FCI Miami where he is currently incarcerated, Cabrera is not on any lists for special monitoring or attention. The facility does not have the ITS system, so it is not possible to place an alert on his telephone calls. We believe that that Cabrera is the type of inmate who merits special attention for ongoing drug dealing. The BOP is not currently conducting any special effort with regard to Cabrera, but cannot easily do so

³² The BOP informed us that, since the time of our inquiry, Zappola has been entered into SENTRY under the STG phone abuse category and placed on alert in ITS.

because FCI Miami does not have the ITS system. We believe that the BOP should consider putting Cabrera in an institution with ITS, putting an alert on all his calls, and carefully monitoring his activities.³³

³³ The BOP has informed us that, since the time of our inquiry, Cabrera has been re-designated to a facility "commensurate with his security needs."

CHAPTER SIX

RECENT BOP CORRECTIVE EFFORTS

The law enforcement reaction to the Rayful Edmond case was substantial. Both the FBI and the District of Columbia U.S. Attorney's Office harshly criticized the BOP, blaming it for lax management that permitted inmates to orchestrate drug deals from federal prison. In response to this criticism, the BOP established two working groups to make recommendations regarding the issue of inmate telephone abuse. The Department of Justice also established a third working group. In addition, the BOP issued a National Strategic Planning Objective to address inmates' misuse of telephones.

In this chapter, we describe the three working groups and the changes that the BOP has implemented. As we describe below, there have been few substantive changes resulting from these efforts and, taken together, we believe they are not sufficient to address the serious problem of inmate telephone abuse.

I. 1996 BOP Working Group

In August 1996, BOP Director Kathleen Hawk Sawyer convened a BOP working group to review the inmate telephone program and inmate visiting and mail procedures. The group consisted of five BOP Assistant Directors, two attorneys from the BOP's Office of General Counsel, the Chief of the Trust Fund Branch, the Chief of the Intelligence Section, SIS officers from Allenwood and Lewisburg, and support staff. Minutes from the group's initial meeting indicate that, with respect to inmate telephone abuse, "two areas requiring close attention are 3rd party calls and the lack of a limit on the number of calls that can be made by an inmate."

Also at the working group's initial meeting, the BOP's Intelligence Section staff discussed ways to improve control of inmate telephone use in BOP institutions. Among the issues raised were new technology, improved training for telephone monitors and remote monitoring officers who monitor inmate calls, and restrictions on the length of inmate calls and the hours per day inmate telephones are turned on. The group made a series of assignments at this first meeting, which included research into telephone technology (such

as voice recognition and the ability to stop third party calling), the BOP's legal ability to limit inmate calls, and the foreign language capabilities of BOP telephone monitors.

At a second meeting of the working group, held in September 1996, the group decided to conduct a week's worth of intensive call monitoring at Allenwood's four-prison complex to gather information about the number of inmate calls. The group planned to use the information from this sample to develop standards for the amount of inmate telephone monitoring that was needed.

Most of the work group's assignments were never completed. However, it did complete the telephone monitoring survey at Allenwood, which found that the 7,163 inmates in the four-prison Allenwood complex placed an average of 7,500 calls each day. The survey projected that an average of 15 percent of all inmate calls could be monitored if each of the four institutions in the complex had ten monitors listening to 28 to 30 calls each during an eight-hour shift.

This work group did not meet again after its second meeting. As we describe in section D below, another working group, called the Wardens' Working Group, was established in the fall of 1997 to address inmate telephone abuse issues.

II. The BOP Director's Letter to Wardens and Executive Staff

On April 2, 1997, BOP Director Hawk Sawyer emphasized her concern about inmate telephone abuse in her regular "Director's Letter" to all wardens and executive staff. The letter began by stating: "While we recognize that inmates generally should be allowed to communicate with loved ones outside the institution, we know that telephone privileges can easily be abused, and we must do everything in our power to prevent such abuse." The letter said that the first step necessary was to "redouble our efforts to monitor inmate telephone calls effectively" and suggested the following additional steps: (1) monitoring requirements and procedures should be specifically addressed in post orders of remote monitoring officers; (2) production of telephone monitoring reports should be considered a performance element; (3) institutions with dedicated telephone monitoring posts must not vacate these positions; (4) all suspicious conversations should be referred to the SIS office;

(5) illegal activities should be referred immediately to the FBI and the referral documented in BOP records; and (6) inmates who abuse telephone privileges must receive "meaningful disciplinary action."

The letter also encouraged institutions to develop a list of inmates whose telephone conversations should receive additional scrutiny, including inmates who make an extraordinary number of telephone calls and inmates who are likely to continue their criminal enterprises while incarcerated. The letter said that these inmates should also be placed on "Posted Picture File" status (as noted earlier in the report, the SIS posts the pictures of inmates who are considered to be potential problems) to familiarize staff with potential telephone abusers. The letter also announced implementation of the new category for "Phone Abuse" in the BOP's SENTRY system. Finally, the letter recommended that each institution arrange a briefing for its executive staff by the SIS office to discuss the inmate telephone system's capabilities and to ensure that other departments support inmate telephone monitoring.

III. Attorney General's Working Group

In the fall of 1996, the Attorney General requested that a working group be established to review issues related to inmates' use of prison telephones. The working group was composed of representatives from the BOP, the FBI, the DEA, the Executive Office for United States Attorneys (EOUSA), the Criminal Division, and the USAO in the District of Columbia. During its year-long existence, the group addressed three primary issues:

1. whether the BOP should continue to allow inmates their current degree of access to telephones;
2. whether better use could be made of recordings of inmate telephone calls and of the data pertaining to inmate telephone calls to identify ongoing crimes; and
3. whether the BOP could better coordinate with federal prosecutors and investigators to ensure that they receive information of possible criminal activities in the BOP's possession

With respect to the first issue on inmate access to telephones, the Attorney General's working group deferred to the Wardens' Working Group (whose work we describe in section IV below). To address the second issue,

the Department's Office of Legal Counsel (OLC) examined Department policy that required law enforcement officials to obtain a subpoena or search warrant for previously recorded inmate calls or a court order under the wiretap statute for monitoring prospective conversations. The OLC stated that these policies were neither constitutionally nor statutorily required and could be changed at any time. In the end, however, the working group decided not to recommend changing that policy in light of objections from the Criminal Division and U.S. Attorneys' offices.

The FBI and DEA representatives on this working group also pointed out that even if they had unlimited access to recordings of inmate telephone conversations, they could not devote the manpower required to listen to every call and decipher inmates' coded conversations. Consequently, they suggested that such access would be of limited utility. The working group eventually concluded that it would not be cost-effective to listen to and analyze all inmate calls, given the high volume of calls and the small number that the BOP asserted involved criminal activity.³⁴ The FBI and DEA believed, however, that transactional data describing inmate calls was a valuable source of intelligence in identifying criminal activity. The group recommended that the Department develop a standardized form that the FBI and DEA could submit to the BOP to request transactional data on specified inmates' calls.

With respect to the issue of coordination between the BOP and investigative agencies, the working group developed a form for the BOP to use to submit reports to the FBI of possible criminal activity by inmates. The form was also intended to track the outcome of these reports.

Based on the working group's recommendations, Attorney General Reno issued a memorandum on May 7, 1998, to the heads of the FBI, the DEA, and the BOP that described the procedure to be followed when law enforcement officials seek transactional data concerning an inmate's telephone calls. It also explained how the BOP was to report criminal activity by an inmate in its

³⁴ The BOP has made the assertion in various arenas that only a small percentage of the large volume of inmate calls involve violations of criminal laws or prison policies. The BOP has not, however, done any studies to support this assertion. As we discussed earlier in this report, the statistics we collected and the interviews we conducted paint a far different picture of the scope of inmate telephone abuse.

custody.³⁵ The memorandum states that most BOP inmates have access to telephones and that "while there are valid penological reasons for allowing inmates this privilege, telephones may be used to facilitate crimes within the institution and by persons in the community."

The final section of the Attorney General's memorandum sets forth a process by which prosecutors and investigators should alert the BOP about "inmates of greatest concern in or about to enter BOP custody." The term "inmates of greatest concern" was defined as "those persons who are or will be imprisoned in a correctional facility operated by the BOP and who are perceived by the outside agency to pose a potential threat of continuing significant criminal activity while incarcerated." The reporting agencies were asked to describe the potential threat to the institution or to public safety and to attach copies of the indictment or other documentation to assist the BOP in understanding the inmate's "specific threat characteristics."

As of the fall of 1998 when we examined this process, the BOP had received such notification from prosecutors or investigators on only two inmates.³⁶ One involved an inmate who had arranged drug deals from prison. The second involved an inmate who directed two different drug trafficking conspiracies while detained at the Metropolitan Correctional Center in San Diego, California.

IV. Wardens' Working Group

The BOP convened another working group to study inmate telephone abuse. The "Inmate Telephone Work group," also known as the Wardens' Working Group, was comprised of four wardens, the Chief of the BOP's Intelligence Section, and a representative from the Administration Division at BOP Headquarters. The group's goal was to implement the BOP's National Strategic Planning Objective 5.11, a BOP mandate designed to prevent inmate telephone abuse.

³⁵ "Procedures For Law Enforcement Access to Transactional Data Pertaining to Telephone Communications of Inmates in the Custody of the Bureau of Prisons; Procedures for Bureau of Prisons Referral of a Criminal Matter to a Federal Investigative Agency," May 7, 1998.

³⁶ As of August 1999, the BOP has received only six such notifications.

The Wardens' Working Group met for three days in September 1997 and discussed a variety of issues, including reasonable inmate access to telephones, hours of inmate telephone operation, and disciplinary sanctions restricting inmate telephone use. According to Michael Cooksey, the Assistant Director of the BOP's Correctional Programs Division, the group attempted to think creatively and develop solutions to the problem of inmate telephone abuse without taking any legal restrictions into account.³⁷

A. Working Group Recommendations

A memorandum with recommendations from the Wardens' Working Group was completed in November 1997. It recommended that inmates' non-attorney telephone calls be limited to two per day, 75 minutes of telephone usage per week, and a total of 300 minutes per month. Each inmate call would be limited to 15 minutes. The working group cited the 1996 BOP telephone survey that indicated that three-quarters of all inmates make less than five 15-minute telephone calls a week and that less than 6 percent of inmates were spending more than 30 minutes a day on the telephone. See section I, above. The working group believed that the proposed limit on calls would continue to allow inmates reasonable access to the telephones while reducing the total number of calls and enabling BOP staff to monitor a greater percentage of calls. The working group report stated: "When coupled with effective inmate profiling and telephone monitoring and the increased sanctions for telephone abuse, this will provide more deterrence and decrease the incidence of criminal activity and other telephone abuses."

It is clear from interviews with the members of the working group that they did not have an accurate idea of the scope of the telephone abuse problem when they made their recommendations. This was because, despite concerns about telephone abuse since the early 1980s, BOP had not gathered

³⁷ It is unclear why this approach was taken given the lengthy litigation over the BOP's Inmate Telephone System and the subsequent settlement agreement. The BOP informed the OIG that the legal review was to be completed after the best operational methods had been determined. The BOP also asserted that the group was given guidance by the BOP's General Counsel the first day of the session in order to make them aware of elements of the Washington v. Reno settlement.

"comprehensive" data on this topic. Deputy Assistant Director of Correctional Programs (and former warden) Dennis Bidwell told the OIG that the group based its recommendations on the general experience its members had as wardens and their sense of what constituted reasonable access to telephones for inmates.

The working group also recommended that the hours of inmate access to telephones be limited to 6:00 a.m. to 11:30 p.m. The working group reasoned that the decreased hours of operation would allow additional time for staff to monitor previously recorded telephone calls.

On the issue of disciplinary sanctions, the working group recommended that the BOP's "Telephone Regulations for Inmates" be revised to provide wardens the discretion to temporarily suspend an inmate's telephone privileges when an inmate was under investigation for suspected criminal activity using the telephone. The group also recommended raising the severity level for telephone abuse involving criminal activity from a 400-level offense to the 100 level (the most serious category). The working group recommended raising all other telephone abuse to a 200-level offense that automatically would be referred to the Disciplinary Hearing Officer (DHO) and avoid informal resolution of the charges. This would promote consistency of sanctions, provide for more severe sanctions, and allow the SIS office to track the offenses.

The working group also recommended that the BOP change its telephone regulations to allow wardens to restrict an inmate's telephone use as a matter of classification by the institution's unit team, much like restrictions that are placed on certain inmate's correspondence privileges. This restriction would not be a sanction for specific instances of misuse of the telephone, but rather a method of controlling whom a prisoner could call. A warden can restrict an inmate's general correspondence if the inmate is a security risk, threatens a government official, or has committed an offense involving the mail.

In its report, the working group listed potential disadvantages to its proposals, including inmate dissatisfaction that might lead to increased filings of inmate grievances and other litigation; a possible decrease in the number of calls from cooperating inmates to outside law enforcement entities; and a possible increase in requests by inmates to place unmonitored legal calls. The

working group also expressed its concern that any reduction in telephone privileges would encourage inmates to shift their illegal activities from the telephone to the visiting room or their correspondence, or attempt to solicit staff involvement in criminal activities.

B. Review by Federal Programs Branch Attorneys

In November 1997, the BOP's Office of General Counsel asked Federal Programs' attorneys to review the working group's recommendations and advise of the litigation risks the BOP might face under the Washington v. Reno settlement agreement if the proposed changes were implemented.

Kathleen Moriarty Mueller, an attorney in the Federal Programs Division, told the OIG that the working group did not have any legal guidance about their mission from anyone at BOP Headquarters and none of its members had any legal training. Mueller said that the working group's draft report had to be rewritten by Federal Programs staff before it was presented to the Executive Staff.

The Washington v. Reno settlement requires BOP to provide inmates with 135 minutes of telephone calls per month – 120 minutes of collect calls and one 15-minute debit call. The 300 limit far exceeds this requirement. Federal Programs said that inmates might challenge any restrictions but concluded that the BOP could still prevail if it established that the limitations on inmate telephone privileges were implemented "to maintain the security or good order of the correctional institution, or to protect the public." (Settlement Agreement, Section IV.)

C. Review by the BOP Office of General Counsel

The BOP's Office of General Counsel (OGC) reviewed the working group's recommendations and Federal Programs' analysis, weighing the possibility that implementing the proposals would reopen the litigation in Washington v. Reno. The OGC, agreeing with Federal Programs, said that prior to instituting restrictions on inmate telephone privileges BOP needed to: (1) have a clear, concise explanation of what is and what is not permitted under the new policy; (2) be able to explain and support with evidence the goals and objectives it seeks to obtain with the new policy; (3) be able to explain with supporting testimonial, anecdotal, and statistical evidence how each aspect of

the new policy will advance these goals and objectives; and (4) have a legal argument explaining why each aspect of the policy change is consistent with the settlement agreement. OGC noted that BOP's SIS office has not "compiled any statistics or reports of prosecutions or disciplinary infractions by inmates using the phone." Finally, OGC said that formal rulemaking would need to be undertaken before any changes in inmate telephone privileges were implemented.

The OGC also raised concerns that if inmate calling privileges were restricted, the BOP would have to amend its contract solicitations for the ITS II proposal. Otherwise, the BOP could risk a possible bid protest or the contractor could seek a contract price adjustment. OGC suggested delaying the final contracting phase until after the BOP's Executive Staff made a decision about the working group's recommendations to restrict inmate calls.³⁸

Carolyn Sabol, a BOP Deputy General Counsel on the negotiation team handling the Washington v. Reno litigation, told us that she felt strongly that it was not the right time to make any changes in inmate telephone privileges that could disturb the settlement. She said that the federal judge presiding over the case had accepted the settlement agreement with the expectation that inmates would continue to have unlimited telephone calls, although the settlement agreement does not provide specifically for this.

D. Decision on Working Group's Recommendations

In November 1997, the Working Group's recommendations and OGC analysis were forwarded to the BOP's Executive Staff for review and decision. The Executive Staff did not make a decision on the issue of whether to limit inmate telephone calls and decided that the issue should be presented to the

³⁸ In May 1997, Kevin Rooney, the BOP's Assistant Director for Administration, wrote to BOP Director Hawk Sawyer about the impact of limiting inmate calling privileges on solicitation of the ITS II contract. The memorandum said that if the BOP intended to restrict inmate calling in the near future, "it would be prudent to include this restriction in the current solicitation for the new system." However, when the BOP Director met with Rooney and the Trust Fund Chief, she received assurances that the solicitation would be flexible enough to accommodate a future modification of inmate calling privileges, even down to the 120-minute minimum allowed under the settlement agreement. Consequently, the contract solicitation was not modified.

Deputy Attorney General for his review. The Executive Staff approved the working group's remaining recommendations: to increase of disciplinary levels for violations, to limit hours of telephone use to 6 a.m. to 11:30 p.m., and to continue "emphasis on inmate profiling and inmate telephone monitoring at the local level."³⁹ It rejected proposals to eliminate the 400-level offense code for telephone abuse; the recommendation that all level 200-level offenses be automatically referred to the DHO; and the proposal to permit wardens to restrict an inmate's telephone access as a matter of classification by the Unit Team.

On December 16, 1997, BOP Director Hawk Sawyer met with Deputy Attorney General Eric Holder regarding the working group's recommendations on the issue of limiting inmate telephone privileges. According to a BOP memorandum, Deputy Attorney General Holder and Director Hawk Sawyer agreed that, due "to the terms of the settlement agreement and the many new security features on the new telephone system," limitation on all inmates' telephone privileges was not necessary at that time. According to the BOP memorandum, "The Bureau will implement ITS-2 and the other changes recommended and then assess its impact on reducing inmate criminal conduct by telephone."

V. The BOP's National Strategic Planning Objective 5.11

In early 1996, before the working group was established, in response to concerns about inmate telephone abuse, the BOP established National Strategic Planning Objective 5.11. These objectives are issued by the BOP to guide its policy decisions and keep track of progress made in each area. Objective 5.11 was drafted by the Correctional Programs Division, which also has responsibility for tracking progress under the objective.

The goal of Objective 5.11 was to "prevent inmates from engaging in or continuing criminal activity during incarceration through an enhanced emphasis on training and intelligence gathering (identification, detection and deterrence)." According to BOP Assistant Director for Correctional Programs Michael Cooksey, Objective 5.11 was partly geared towards inmates' use of telephones to commit crimes, although that was not its sole focus.

³⁹ It also approved some changes in visiting and mail privileges.

Under Objective 5.11, the BOP was to use the following strategies to reduce criminal activity by inmates: improve the flow of information within the BOP to ensure timely reporting; utilize all intelligence resources to target inmates with a high likelihood to continue criminal behavior in prison; fully use "confidentials" and "posted picture card" information, which are BOP databases with intelligence information on problem inmates; use outside intelligence resources; and impose more severe sanctions for inmates who conduct illegal activities. The BOP identified "indicators" under each of these strategies to determine if these objectives had been accomplished .

As of the fall of 1998, when we questioned the BOP, the BOP had accomplished few of these indicators. One effort undertaken by the BOP regarding inmate telephone abuse was the distribution within the BOP of a guide written by the BOP's Intelligence Section, entitled "Inmate Telephone Monitoring, a Field Guide for Planning an Organized Approach to Phone Monitoring Operations." This guide, distributed to all BOP institutions in August 1997, was written primarily by Craig Trout, then head of the BOP's Intelligence Section. The introduction to the guide states:

Among our priority concerns is that we do not have inmates who were convicted for playing leadership roles in major street level drug trafficking organizations continuing their criminal operations through the use of institution inmate telephones. A number of secondary issues also need to be considered, such as basic inmate accountability. We need to ensure that inmates are actually present on work or education assignments and engaged in productive activity, rather than lingering in housing units making telephone calls. Consequently, some inmates may require reassignment from orderly jobs or similar assignments so that their time is more appropriately engaged in institution programs. Finally, we do not want a small number of inmates to dominate telephone usage and reduce the availability of phones for inmates who are programming appropriately.

The overview section of the guide states that in addition to random monitoring of calls, "a major component of monitoring operations is driven by population profiling." Inmates who are suspected of being involved in drug activities, escape plots, or who have been identified as having a high likelihood

of engaging in criminal activity, should be "targeted for intense review of their telephone conversations," according to the guide.

Trout told the OIG that the BOP tries to maintain a balance between proactive and reactive investigations on inmate crimes committed in its institutions – with an emphasis on the proactive. Trout stated that ideally the BOP would have full background information from law enforcement sources on each inmate, would identify "at risk" inmates, and would determine whether inmates were contacting previously identified co-conspirators or known criminals. However, he said the information available to the BOP and the resources to pursue such investigations are inadequate. As discussed above in Chapter Four, we too found that prison institutions were not fully using the methods outlined in the monitoring guide.

As noted above, the BOP has proposed increasing the sanctions for telephone abuse, based on the recommendations of the Wardens' Working group. The BOP has published these proposed regulations. They have been through the comment process, but they have not yet been implemented.

The BOP has also made some progress on a few other indicators suggested by National Strategic Planning Objective 5.11, such as the hiring of intelligence officers. In 1997, the BOP obtained funding for 24 new Intelligence Operations Officers who will be placed at several Metropolitan Detention Centers. The officers will participate as members of law enforcement task forces and collect intelligence on inmates targeted by the task forces when those individuals enter the federal correctional system.

Yet, the BOP appears not to have implemented many other measures required by Objective 5.11 or even know where the efforts regarding those indicators stand. When interviewed by the OIG in the Fall of 1998, Rob Baysinger, who as Chief of Intelligence is responsible for tracking the objective, did not know the status of several indicators that are required of all institutions, such as:

- developing plans to target inmates with a high likelihood of continuing their criminal activities in prison;
- including targeted inmates in SENTRY security threat profile listings, posted picture card files, SIS hot files, mail monitoring lists, and special high accountability watch lists as appropriate;

- establishing a review mechanism to ensure that targeted inmates are not assigned to low accountability details such as orderlies or evening details where inmates remain unsupervised in the housing unit for extended periods of time;
- developing written instructions for telephone and mail monitoring that clearly identify program expectations and specific procedures; and
- placing an increased emphasis on disciplinary actions and sanctions for telephone abuse.

The BOP had instructed each institution to provide their implementation plans for all of the indicators to the Central Office Intelligence Section through the Regional Intelligence staff by September 30, 1998. When we asked the BOP in November 1998 for copies of this information, we were told that the Intelligence Section has not collected or surveyed any of the institutions to ensure that they are developing the indicators.

We therefore contacted BOP's 66 ITS institutions to determine the extent to which they have developed the required indicators. The responses we received from all 66 institutions indicate that few institutions are implementing BOP's recommended proactive procedures for preventing inmate telephone abuse. Our survey found the following:

- only 8 institutions reported having a written policy on targeting inmates with a high likelihood of continuing criminal activity;
- only 14 institutions reported having a mechanism to ensure targeted inmates are not placed on low accountability work details;
- only 12 institutions reported having a written policy on when to include targeted inmates in various categories indicating the need for special monitoring or attention, or on mail and/or telephone monitoring lists;
- 15 institutions reported no increased emphasis on disciplinary sanctions for inmates who abuse the telephone; and
- 58 institutions had post orders for their telephone monitoring officers. However, most of the post orders provided to us by the institutions did not include directions about proactive monitoring of inmate telephone calls.

Thus, it appears that the changes implemented by National Objective 5.11 have been meager. Although the BOP has focused some attention on the issue of telephone abuse, it has taken far too little action in implementing corrective measures or even the directives that it has proposed. And as reflected in our surveys, site visits, review of files, and interviews of BOP staff that we described earlier, the limited corrective efforts the BOP has taken have not been effective in adequately addressing the serious problem of inmate telephone abuse.

VI. Congressional Change in Trust Fund Language

The BOP sought Congressional legislation to clarify its authority to use profits from the Trust Fund to be used for monitoring of inmate telephones. In Washington v. Reno, the Sixth Circuit considered whether the use of Commissary Fund monies to install and operate the ITS system violated the statutory provisions concerning proper use of the Fund. The Sixth Circuit held that the BOP could not use inmate Commissary Trust Funds to pay for components of the ITS system that were primarily for institutional security. The Court noted that the Commissary Fund, which is comprised of profits from the sale of articles at the prison commissaries, is termed a "trust fund" by the provisions of 31 U.S.C. Section 1321(a)(22). The terms of the trust, contained in 1932 Department of Justice circular 2244 entitled "Rules Governing the Control of Prisoners Funds at the Several Penal and Correctional Institutions," provide that, with the approval of the Director of the BOP, the fund "may be disbursed on written order of the Warden for any purpose accruing to the benefit of the inmate body, as a whole, such as amusements, education, library or general welfare work."

The plaintiffs in Washington v. Reno argued that expenditures from the Commissary Fund for the installation and support of the ITS system were not for the benefit of the entire inmate body and therefore should not be made. The Sixth Circuit held that the plaintiffs might not be able to show that the ITS did not benefit the general population as a whole. The Court stated:

In fact, the very existence of any system allowing telephonic communication with individuals outside the prison system can be viewed as a substantial benefit to the prison population as a whole. Moreover, a system such as ITS that can lower the cost of calls made by the inmates accords yet an additional benefit to

the plaintiffs. Also, although funds for the ITS system will initially decrease the balance in the Commissary Fund, evidence before the district court established that, once fully operational, the ITS system, based on purchases of phone 'credits' from the prison commissaries, will actually result in a net profit for the Commissary Fund.

The evidence before the district court showed that live monitoring equipment was utilized both for a security function and for "diagnostic purposes" in keeping the telephone lines functioning properly. The Sixth Circuit held that where trust fund expenditures have dual purposes, the court must examine the primary function of the questioned expenditure. If the primary purpose of the expenditure is to provide for responsibilities attendant upon the confinement of persons housed in federal facilities the trust fund cannot be used. Otherwise, the Court held, "security costs" that were expended from the Commissary Fund, even if they may have also served a legitimate phone system function, will improperly deplete the balance of funds ultimately available to the inmates for other purposes." The case was remanded to the district court for further findings.

In an effort to alleviate the problem of a possible prohibition against use of trust fund monies for costs related to its security, the BOP obtained new legislation designed to remedy the situation. The legislation, as passed in PL 105-277, 112 Stat 2681, provides:

For fiscal year 1999 and thereafter, the Director of the Bureau of Prisons may make expenditures out of the Commissary Fund of the Federal Prison System, regardless of whether any such expenditure is security-related, for programs, goods, and services for the benefit of inmates (to the extent the provision of those programs, goods, or services to inmates is not otherwise prohibited by law), including --

1. the installation, operation, and maintenance of the Inmate Telephone System;
2. the payment of all the equipment purchased or leased in connection with the Inmate Telephone System; and
3. the salaries, benefits, and other expenses of personnel who install, operate, and maintain the Inmate Telephone System.

The legislation was intended to clarify the BOP's position that ITS as a whole was for the benefit of the inmate population. The costs of security are therefore simply costs associated with the substantial benefit of telephone access provided the inmates by ITS.

The BOP OGC told the OIG that this legislation would suffice to allow the BOP to begin using trust fund monies to pay for costs of security related to ITS beginning in fiscal year 1999. However, attorneys for the Federal Programs Branch who handled the litigation in Washington v. Reno had several concerns.

For example, the language of the statute provides that costs of employees can be paid when they "install, operate, and maintain" the system. It is an open question whether BOP staff focussed on gathering intelligence information and targeting specific inmates are "operating" ITS. The focus of these employees is not on operating the system or detecting fraud within the system, but on investigations, an aspect that may not fit within the legislative language. The attorneys recommended that further legislation that is specifically designed to have monitoring costs paid for by the Commissary fund be sought.

In addition, the Federal Programs attorneys warned that telephone monitors and other staff that deal with the ITS often perform other functions within an institution as well. If the BOP plans to pay for costs of monitoring out of the Commissary Fund, it must be very careful to keep an accounting of the time an employee spends on telephone functions and the time that is spent on other activities that should not be paid for by Commissary funds.

CHAPTER SEVEN

ANALYSIS

As described throughout this report, the BOP's efforts to prevent inmates from using the telephones to commit crimes have been limited, uneven, and ineffective. This chapter describes our analysis of efforts that could be taken to address this problem.

I. Cap on Inmate Calls

It is clear from our investigation that inmate calling must be reduced. The BOP monitors less than four percent of inmate calls. Even a significant increase in the number of monitors would not result in a sufficient level of monitoring. It is also apparent that a small number of inmates contribute disproportionately to the very large volume of calls.

The OIG believes that a cap on the number of minutes an inmate may spend on the telephone per month is an appropriate response to the dilemma of too many calls and too few monitors. We do not believe that there is any legal or contractual impediment to implementing such restrictions, and we conclude that the BOP has been overly cautious by postponing consideration of such action.

First, there is no legal prohibition against restricting inmates' telephone privileges. While federal courts have held that inmates have a First Amendment right to some level of telephone access,⁴⁰ this right is subject to reasonable restrictions related to prison administration and security. Federal

⁴⁰ Courts have recognized an inmate's right to telephone access, but have not reached a consensus on the precise level of access required by the Fourth Amendment. In Thornburgh v. Abbott, 490 U.S. 401, 407 (1989)(quoting Turner v. Safley, 482 U.S. 78, 84, 94-99 (1987)), the Supreme Court held that "'prison walls do not form a barrier separating prison inmates from the protections of the Constitution,' . . . nor do they bar free citizens from exercising their own constitutional rights by reaching out to those on the 'inside.'" In Pell v. Procunier, 417 U.S. 817, 822 (1974), the Supreme Court held that a prison inmate retains those constitutional rights "that are not inconsistent with his status as a prisoner and with the legitimate penological objectives of the corrections system."

courts have held that there is "no legitimate governmental purpose to be attained by not allowing reasonable access to the telephone, and . . . such use is protected by the First Amendment,"⁴¹ but restrictions on telephone privileges will not violate the inmates' First Amendment rights if they are reasonable.⁴²

The BOP requested an opinion on this issue from the Department's Office of Legal Counsel (OLC). In January 1997, the OLC wrote that, under the prevailing case law, limitations on the right to telephone access will not violate the First Amendment if they are reasonable (citing Pope v. Hightower, 101 F.3d 1382, 1384 (11th Cir. 1996) ("when a prison regulation impinges upon an inmate's constitutional rights, the regulation is valid if reasonably related to legitimate penological interests"); Washington v. Reno, 35 F.3d 1093, 1100 (6th Circuit 1994) (prisoner's right to telephone access is "subject to rational limitations in the face of legitimate security interests of the penal institution"); Strandberg v. City of Helena, 791 F.2d 744, 747 (9th Cir. 1986)).⁴³

Notwithstanding this apparent authority, the BOP has consistently postponed implementing any restrictions on inmate telephone access, citing concern that such action could reopen the litigation in Washington v. Reno. The lawsuit filed by inmates against the BOP challenging ITS has greatly

⁴¹ Morgan v. Leval, 526 F.2d 221, 225 (2d Cir. 1975); Johnson v. Galli, 596 F. Supp. 135, 138 (D. Nev. 1984).

⁴² See, e.g., Strandberg v. City of Helena, 791 F.2d 744, 747 (9th Cir. 1986); Fillmore v. Ordonez, 829 F. Supp. 1544, 1563-64 (D. Kan. 1993) aff'd, 17 F.3d 1436 (10th Cir. 1994). See also Benzel v. Grammer, 869 F.2d 1105, 1108 (8th Cir.) cert. denied, 493 U.S. 895 (1989); Lopez v. Reyes, 692 F.2d 15, 17 (5th Cir. 1982); Feeley v. Sampson, 570 F.2d 364, 374 (1st Cir. 1978).

⁴³ In addition to the First Amendment, the Sixth Amendment has been interpreted by the courts to guarantee some telephone contact between an inmate and his attorney. The OLC found, however, that this right is not unlimited. The BOP need only provide access to counsel that is "adequate, effective, and meaningful when viewed as a whole." OLC memorandum, citing Aswegan v. Henry, 981 F.2d 313, 314 (8th Cir. 1992) ("Although prisoners have a constitutional right of meaningful access to the courts, prisoners do not have a right to any particular means of access, including unlimited telephone use, citing Bounds v. Smith, 430 U.S. 817, 823, 832 (1977)). OLC concluded that reasonable restrictions on access to attorney calls are permissible, especially when other means of attorney contact are available.

influenced and, to some extent, controlled, the manner in which the BOP has handled the problem of inmate telephone abuse. The settlement agreement imposes some limitations on the BOP's ability to alter inmate access to telephones until January 2002. However, we believe the BOP has been overly cautious in not implementing needed changes. [For a detailed description of the Washington v. Reno case and settlement agreement, see Appendix 1.]

As discussed above, Federal Programs reviewed the proposal to reduce inmate telephone time in December 1997 and made suggestions for gathering information in order to prevail in any court challenge to the new policy. The OIG interviewed Federal Programs attorneys Kathleen Moriarty Mueller and Rafael Gomez, who handled the Washington v. Reno litigation, about whether the settlement agreement was an impediment to a cap on inmate calls. The attorneys told the OIG that it was not necessarily an impediment.

Mueller and Gomez stated that it was their understanding that after the meeting between Director Hawk and DAG Holder, BOP was planning to reconvene the Wardens' Working Group to begin collecting supporting documentation to support the restrictions, and that they were surprised that the BOP has not yet done so. Gomez told the OIG that the BOP has since taken the position that Federal Programs' opinion was that inmate calling privileges could not be reduced under the settlement agreement. This is not true, according to both Federal Programs attorneys.

Both Mueller and Gomez believe that the BOP could prevail in a suit challenging a reduction in calling privileges. They identified for the OIG several arguments in support of the Wardens' Working group recommendation to limit inmate calls to 300 minutes a month:

- A 300-minute maximum is well above the 135 minutes of telephone usage per month required by the settlement agreement. While restrictions might bring a challenge from the inmate population, the attorneys said that the BOP has the stronger legal argument on this point.
- The BOP can decide that limiting inmate calls is required to ensure the security of its institutions and for public safety. The settlement agreement permits the BOP to take whatever action it deems necessary to protect the public and maintain security. Regulations that impinge on constitutional rights are valid if they are reasonably related to legitimate penological interests, as articulated in Turner v. Safley. Both attorneys

believe the BOP would prevail if it gathered statistics such as the number of calls that go unmonitored and the number of inmates making calls.

- The BOP could inform the district court that it plans to invoke the Prison Litigation Reform Act (PLRA) to dissolve the settlement agreement if the court is unwilling to allow the BOP to restrict inmate telephone privileges. The PLRA, which came into being since the time of the settlement agreement, specifies that a consent decree can be no broader than necessary to remedy a constitutional violation and requires a court to make findings of constitutional violations and narrowly tailor the consent decree to remedy only those violations. If the BOP invoked the PLRA, the district court would be forced to examine the settlement agreement to ensure that it is no broader than necessary to remedy any constitutional violations. Because the BOP would argue that no constitutional violations exist, the entire decree would be voided.

We agree with the Federal Programs attorneys that the settlement agreement would not prevent the implementation of a cap on inmate calls. While it is possible that a change in the status quo would reopen the settlement agreement, this possibility should not stand in the way of the BOP taking needed action to address a serious problem. The law and policy appear to be on the BOP's side on this issue.⁴⁴

Through interviews and document review, the OIG found two other concerns on the part of the BOP concerning the implementation of a cap on calls. First, there was considerable discussion about the possibility that any reduction in inmate calls would require a re-negotiation of the ITS II contract and cost the BOP money. The BOP OGC took the position that any reduction

⁴⁴ The BOP asserts that, while the OIG may be correct that the BOP would ultimately prevail in a legal challenge to telephone restrictions, "the practical realities of when to litigate and the resources expended to defend such a restriction are overlooked and underestimated by the OIG." The OIG does recognize that such litigation could be both disruptive and time consuming. However, based on our interviews of Federal Programs attorneys and our view of the seriousness of the problem of inmate telephone abuse, we believe that restrictions on telephone privileges, and a strong defense to any challenges to these restrictions, are necessary.

in calling privileges should take place prior to the finalization of the ITS II contract. This was not done. Since that time, however, the Administration Division has taken the position that the contract is flexible enough to allow for a reduction in calls without significant penalty to the BOP. The actual effect a cap on calls would have on the current contract remains to be seen.

Another issue that arose in our conversations with SIS officers at the nine institutions that we visited was the prisoner reaction to a cap on inmate calls. All said that such restriction could create problems, including possible violent reactions from inmates. However, they stated that with planning and careful implementation of the cap, the restrictions could be phased in a way to prevent such problems.

II. The BOP's Failure to Devote Sufficient Resources to the Problem

We found that the BOP has not devoted sufficient resources to addressing the issue of inmate telephone abuse. SIS offices at BOP institutions do not have the resources to effectively monitor any significant percentage of the tens of thousands of telephone calls made by inmates every day. In fact, as detailed in our report, the BOP cannot even accurately identify the scope of the problem. And as discussed extensively throughout this report, the BOP has failed to properly train the SIS offices and other telephone monitors to do their jobs efficiently by using the available technology.

A. Training

First, all of the line officers we spoke with who were assigned to monitor telephones complained that they have not received any training in the use of their equipment and have had to teach themselves and learn from others on the job. This self-training has not been successful. We found that many BOP ITS institutions do not use the full range of the monitoring technology available to them, especially the alert function. In addition, monitors do not receive training with respect to codes, gang affiliations, drug trafficking patterns, or other areas that might aid them in detecting illicit activity over the telephones.

We found that telephone monitoring training is given at the SIS training courses held for new SIS officers every quarter. However, the BOP offers no training for other telephone monitors or remote monitoring officers who must

monitor inmate calls as part of their duties. Moreover, the "telephone portion" of the SIS training covers only some of the critical areas, such as legal and policy issues, the handling of subpoenas, and descriptions of the various recording systems currently being used in the institutions. It does not appear to provide sufficient emphasis on making full use of ITS.

The training courses do emphasize providing extra attention to inmates of concern. They emphasize that it is not possible to listen to 100 percent of all inmate calls, so officers are encouraged to identify and track inmates with the highest likelihood of using prison telephones to engage in criminal activity. The courses suggest targeting techniques, placement in the posted picture file and SENTRY phone abuse category, and the creation of computer searches for calls by inmates of specific concern. New officers are encouraged to carefully screen telephone lists for high-risk inmates before approval. The training courses also discuss the BOP's plans to upgrade its hardware and software and reviews the new features of ITS II and an "enhanced telephone monitoring pilot program," in which correctional officers review previously recorded calls on a walkman while they are patrolling the institution. However, despite these training courses we found little evidence that these techniques are being implemented at the institutional level.

B. Insufficient Staffing

The BOP has not devoted sufficient staff to monitor inmate telephone calls. As discussed elsewhere in this report, less than four percent of calls are live-monitored. In addition, many institutions have many hours a day when inmates are using the telephones, but there is no telephone monitor on duty. The institutions do not have the staff to review previously-recorded calls to fill this gap in coverage.

We believe that regional SIS offices are unable to alleviate this burden, although they are underused and could provide some assistance that would help standardize practices throughout the BOP. Currently, Regional SIS offices appear to be largely administrative positions that do little to aid the SIS offices they are supposed to serve. SIS staff at various institutions we spoke

with said they rarely, if ever, consulted with the Regional SIS office for assistance regarding telephone issues.⁴⁵

However, Regional SIS offices could provide training for telephone monitors and written guidance regarding who should monitor calls, the percentage of calls to be monitored, the type of inmates to receive targeted monitoring, and inmates that should be proactively restricted from telephone use as a matter of classification. Regional SIS offices could also be charged with ensuring that telephone monitoring officers at each institution know the full capabilities of ITS and how to use their monitoring equipment. The Regional SIS for the North Central Region told us that many telephone monitors in his region do not know how to use their telephone monitoring equipment. We believe that correcting this situation should be a Regional SIS Coordinator responsibility. There are likely other tasks that the Regional SIS could perform if the BOP implements a proactive approach to the problem of telephone abuse.

In addition, we believe that the BOP's Sacramento Intelligence Unit (SIU) is underused. The SIU staff told the OIG that they assist institutions in targeting inmates for telephone monitoring. For example, SIU staff said that they may ask institutions to check their call records for certain telephone numbers and then request that any calls made to those numbers be monitored. However, no member of any SIS office we interviewed reported speaking with the SIU on telephone issues. SIS staff should be trained about what the SIU has to offer them and encouraged to use this resource.

⁴⁵ The North Central Regional SIS Office, for example, has oversight responsibilities for 16 BOP facilities. According to Regional SIS Coordinator Robert Callahan, he is responsible for collecting information from the 16 institutions and preparing seven different reports for the Central Office each month. He subsequently receives national information from the Central Office and reviews it to see whether the institutions in his region are in line with other BOP institutions. He is also the regional coordinator for intelligence, and disseminates to the institutions in his region information received from sources on inmate illicit activities. He provides assistance to institution SIS offices when requested, and helps the institutions prepare for their program review inspections. He has no budgetary functions, performs limited training, and described his assistance relative to inmate telephone monitoring as limited. The SIS offices in his and other regions said that they rarely consult the Regional SIS on telephone issues.

Finally, we believe that the BOP's hiring of 24 new intelligence officers at the field-level for the Intelligence Section is a significant advancement. However, it is likely that a significantly greater number of such officers will be required for any proactive intelligence-gathering effort to be successful in reducing telephone issues.

III. Restriction of Telephone Privileges as a Matter of Classification

Craig Trout, former chief of the BOP's Intelligence Section, told us that the BOP's operational policy is to start inmates with full privileges until incidents occur that justify restricting those privileges. He told the OIG that if the BOP wants to restrict certain inmates' telephone privileges from the time they enter federal custody – i.e., before any infractions occur – a mechanism such as “restriction on the basis of classification” or some other sort of proactive measure is needed.

As discussed above, the Wardens' Working Group recommended that the BOP amend its inmate telephone regulations to include language similar to that in the BOP's general correspondence regulations.⁴⁶ In effect, this would allow a warden to restrict an inmate's access to the telephone as a matter of classification. Similar to the correspondence regulations, the restriction would only affect who an inmate could call, not the number of telephone calls, because the regulation is designed to regulate dangerous contacts an inmate may make. Such restrictions would not be a sanction for telephone misuse, but a classification decision to protect the safety and good order of the institution and to protect the public.

It is important for the BOP to find a mechanism to restrict privileges as a matter of classification in the most extreme cases. However, before restricting telephone privileges through classification decisions, the BOP should carefully review the current correspondence regulations to avoid the following potential problems. First, the correspondence restrictions are virtually unknown to BOP staff charged with implementing them. Our review found that the people who are supposed to make classification decisions are not aware of their authority to restrict an inmate's correspondence. This option is not mentioned in the

⁴⁶ 28 C.F.R. Section 540.14 and 540.15

official written guidance for inmate classification or in the inmate or custody classification program statements.

The second potential problem is whether restrictions on correspondence or telephones as a matter of classification could withstand judicial scrutiny. Because restrictions on correspondence as a matter of classification have not been used by the BOP, there has not been any litigation that has resolved their validity. Based on our analysis of the limited case law on this question, we believe that, under the standards of Turner v. Safley, restrictions on correspondence based not on discipline of an inmate but as a matter of classification can withstand judicial scrutiny. The BOP should closely examine this issue, however, before deciding whether to implement such a regulation with respect to inmate telephone use. In order to prevail, the BOP must be able to make a convincing argument that such restrictions are reasonably related to legitimate penological interests, which we believe it could do. [For a more detailed discussion of this issue, see Appendix 6.]

Identifying the appropriate BOP employee with the authority to restrict inmate telephone privileges is a third unresolved question. As discussed above, the unit team at the institution is responsible for making such decisions with respect to correspondence. The OIG believes that the BOP should consider making decisions about restrictions on telephone privileges early in the inmate classification process. However, the BOP officials we interviewed were very reluctant to have regional officials make such decisions because of concern that they do not have sufficient information about the inmate to make appropriate decisions. While this may be true in borderline cases where a potential for telephone abuse is only suspected, it is not true in the types of cases the OIG reviewed in the course of this inspection. Restricting telephone access for prisoners who committed crimes in prison with telephones, such as Rayful Edmond, Jose Naranjo, Anthony Jones, and Oreste Abbamonte, clearly could be made at the regional level. Making the decision at the regional level would also eliminate the possibility that the unit team would not receive the necessary information about the inmate to make an informed decision about limiting telephone privileges.

Leaving decisions about telephone restrictions as a matter of classification to individual institutions has several other disadvantages. First, if an inmate is to have permanently restricted privileges, it may affect the institution to which the inmate should be assigned. The BOP is concerned that

mixing inmates with restricted privileges with those with full privileges will lead to a situation in which inmates with restricted privileges will take or buy the privileges of others. One possible solution to this would be to create institutions or wings of institutions that would not have telephone privileges. This also would avoid the problem of having to keep inmates in very high security level institutions such as USP Florence or USP Marion because of the likelihood of telephone abuse when the inmates do not otherwise require that level of security.

Second, the unit teams we encountered function like counselors to the inmates. The unit team sees its mission as guiding the inmates toward success in the least restrictive environment. We believe it unlikely that they would impose restrictions on new inmates and would prefer, instead, to give them the benefit of the doubt.

Finally, in order to make appropriate classification decisions about telephone privileges and classification decisions in general, the BOP must take steps to increase its information about inmates. The Central Files we reviewed on selected inmates contained very little information on the inmate's history and offenses. The BOP must gather far more information on incoming inmates in order for it to be more proactive in its classification decisions.

IV. Increase in Disciplinary Sanctions for Inmate Telephone Abuse

As described in Chapter 6 of this report, the BOP Executive Staff agreed with the recommendation from the Wardens' Working Group to raise the level of sanctions for telephone abuse from a 400 level (lowest) to either the 200 or 100 level in December 1997. The BOP proposed such regulations, which have gone through the comment period, and should be implemented soon. As of March 1999, however, the proposed regulations have not been implemented.

We believe that this increase in the disciplinary level for telephone abuse will be helpful in addressing telephone abuse. All SIS personnel we interviewed stated that the 400-level sanction was simply too low to be any deterrent to inmates. Many institutions have addressed inmates' telephone violations on an informal basis and imposed relatively minor sanctions on telephone abusers. We believe that the new regulations, if implemented and followed, will more likely result in chronic telephone abusers losing privileges for significant periods of time.

V. Use of Administrative Punishments

In the cases that we reviewed, we found that the BOP rarely takes administrative action against an inmate who is criminally prosecuted for crimes that involve the use of prison telephones. The result is that often an inmate receives a significant additional prison sentence but retains telephone privileges that could enable him to continue his criminal activities from prison. The BOP should make the penalties for telephone abuse clear, enforce such infractions uniformly and consistently, and permanently revoke the privileges of repeat offenders.

A BOP OGC attorney told us that in some cases, prosecutors ask the BOP to delay administrative action until the conclusion of criminal proceedings in order to avoid claims of double jeopardy -- the defendant's right not to be tried twice for the same crime. We did not find such requests in any of the cases that we reviewed. Moreover, there is no excuse for not taking strong action after an inmate is convicted, a failure which occurred in several cases we reviewed.

Failure to administratively punish convicted telephone abusers is a very significant failing on the part of the BOP. Common sense would suggest that inmates with longer sentences stemming from crimes committed in prison have less incentive not to violate prison rules and commit additional crimes. And yet, we found that many of these inmates retain the means to commit new crimes. The BOP needs to aggressively enforce its regulations concerning inmate telephone abuse.

VI. Other Possible Methods of Restricting Privileges

The BOP has statutory authority to limit privileges for inmates in national security cases and to prevent acts of terrorism and violence. 28 C.F.R. Section 501.2 provides that "special administrative measures" can be implemented to prevent disclosure of classified information. Written certification must be made to the Attorney General by the head of a U.S. intelligence agency that unauthorized disclosure of classified information by an inmate would pose a threat to national security and that there is a danger that the inmate will disclose the information. The special administrative measures may include special housing and/or limitations on privileges such as

correspondence, visits, interviews with the news media, and use of the telephone. Under 28 C.F.R. Section 501.3, the BOP can also implement special administrative measures to protect against "risk of death or serious bodily injury." Specifically, the statute is to be used in cases where there is a substantial risk that a prisoner's communications or contacts could result in death or serious bodily injury or substantial damage to property.

DOJ's Office of Enforcement Operations (OEO) is responsible for overseeing applications under Sections 501.2 and 501.3. According to the OEO, there is currently one inmate under the restrictions of Section 501.2. There are six inmates under the restrictions of Section 501.3, all terrorists with some tie to the World Trade Center bombing. According to Michael Brave, the attorney who handles these matters at OEO, restrictions made under these sections are very burdensome, and any limitations on an inmate's privileges must be renewed every 120 days and approved by the Attorney General. Thus, these statutes provide a solution to prevent telephone abuse in only rare cases.

There are other possible measures to limit inmates' telephone privileges short of applying under Sections 501.2 and 501.3. Generally, the BOP – and not sentencing courts – has primary authority over the details of confinement for all inmates in its custody.⁴⁷ However, under 18 U.S.C. Section 3582(d), courts have jurisdiction to restrict an inmate's communication with specified people in the case of a racketeering or controlled substance conviction.

In one highly publicized case, the statute was successfully used to restrict an inmate's telephone privileges. Luis Felipe was the self-appointed leader of the New York State Chapter of the Latin Kings, an organization that, according to Felipe, was designed to "promote a sense of Hispanic identity among prison inmates" and to organize Caribbean Hispanics serving jail sentences. Felipe was convicted on racketeering charges stemming from his activities with the Latin Kings in several different New York state prison facilities. The racketeering acts included three murders and three attempted murders. In United States v. Luis Felipe, 148 F.3d 101 (2d Cir.1998), the

⁴⁷ 18 U.S.C. Sections 3621(a) and 4042. See also United States v. Sotelo, 94 F.3d 1037 (7th Cir. 1996) (holding that district court lacked authority to impose restrictions on inmate's telephone calls and correspondence, but the BOP has such authority under 28 C.F.R. Section 540.15(a)(5)).

district court sentenced Felipe to life in prison plus a consecutive sentence of 45 years, and restricted rights of association and communication.

At sentencing, the district court imposed special conditions of confinement requiring that Felipe: (1) be confined without contact with other prisoners; (2) be prohibited from communicating with any Latin Kings or Queens or codefendants; (3) be prohibited from corresponding with or receiving visits from anyone except his attorney and close family members approved by the court with notice to the U. S. Attorney's office, and that correspondence and visits with everyone but his attorney be monitored; and (4) be prohibited from telephone contact with anyone. This last prohibition was later modified to permit Felipe to call his attorney. The court based these restrictive conditions of confinement on Felipe's past behavior, finding that he had abused his privileges while in prison to order at least three murders from jail. When the court later modified the order to allow Felipe to communicate with his sister-in-law, his niece, and an attorney, the court noted that the restrictions on Felipe were not imposed for the purpose of punishing the defendant, but "to protect other individuals who, given Felipe's history, could become his targets in the future." 148 F.3d at 107.

Upon appeal, the Second Circuit upheld the restrictions. It stated that "the record evidenced Felipe's skill at circumventing prison regulations and using secret codes to control the Latin Kings organization and orchestrate several murders." The court held that the district court "properly concluded that Felipe could again use his powers of association and communication to direct other members to carry out violent crimes in the name of the organization. Hence, [the district court] had authority to impose relevant conditions of confinement." 148 F.3d at 114.

The Second Circuit opinion also analyzed whether the district court had the power to limit Felipe's communication with everyone except close family members, given the language of Section 3582(d) regarding limiting correspondence with "specified persons." The court stated:

While we acknowledge that the language of the statute is not broad, the trial court's order, in our view, does not fall outside it. We do not believe Congress expected sentencing courts to list every individual of a racketeering organization in cases where sufficient reason exists to believe the association with any

member is for the purpose of participating in an illegal enterprise. Racketeering groups are often large and boast a constantly changing membership. It would be difficult, if not virtually impossible, to identify each and every active member of such an organization.

The court found that the goal of preventing Felipe from ordering additional killings is "unquestionably a legitimate penological interest." In addition, the restrictions on Felipe's ability to communicate with anyone outside prison are reasonably related to that goal.

Thus, in light of this court's reading of the statute -- and in light of the BOP's general failure to use administrative remedies to restrict inmates such as Felipe from using the telephones -- prosecutors should consider using the statute more aggressively to seek court orders restricting inmates' privileges in appropriate cases. Moreover, we believe the Department should consider seeking legislation to expand Section 3582(d) to allow a court to order such restrictions in cases that do not involve drugs or racketeering.

However, in making this recommendation, we recognize that it may only be useful in the most extreme cases. It is likely that it will be very difficult for prosecutors to carry the burden imposed by Section 3582(d) at the time of a defendant's original sentencing unless, as was the case in the Felipe matter, they can point to specific instances of serious misconduct involving the telephones. Even in a case involving a drug dealer as sophisticated and well-connected as Rayful Edmond, it would have been difficult, if not impossible, for the prosecution to prove that his future prison communications would be "for the purpose of enabling the defendant to control, manage, direct, finance or otherwise participate in an illegal enterprise" at the time of his original sentencing. 18 U.S.C. § 3582(d). The task of monitoring a high risk inmate such as Edmond and then limiting his privileges administratively must therefore rest with the BOP.

VII. The BOP Penological Interests in Providing Telephone Access

As discussed elsewhere in this report, the BOP believes that telephone contact with family and friends plays an important part in an inmate's

rehabilitation and leads to less recidivism⁴⁸ and better behavior in prison. However, the value of telephone privileges has never been specifically studied by the BOP.

Many BOP employees told us that the BOP uses telephone privileges to control the inmate population. Many thought that reducing the amount of time inmates can spend on the telephone would be beneficial, but could cause prison unrest and possibly riots.

Because there are many more inmates than correctional officers, we heard from several prosecutors and FBI agents that the BOP relies a great deal on inmate cooperation to maintain order in its institutions. Federal Programs attorneys and other attorneys who have reviewed the prison telephone system commented on the extent to which telephone privileges are a necessary benefit to keep inmates in a cooperative mode. Prison officials, they said, are loath to change the status quo.

While maintaining family ties is certainly both a laudable and beneficial policy goal, it is unclear the extent to which inmates are using the telephones for this purpose. Our visits to various institutions did not answer this question. We heard from BOP employees who believed that many inmates use the telephones to call their families in an attempt to keep relations intact during their incarceration. However, the majority of SIS staff and telephone monitors to whom we spoke reported that a minority of the calls in their institutions are for the purpose of maintaining healthy family relationships. Instead, they reported their beliefs that between 30 and 90 percent of calls have "something suspicious" about them. In addition, they said that an additional problem is that many inmates' family members are involved in crime, often times committing the same type of offenses for which the inmate is incarcerated.

While it is impossible to definitively determine how many of the calls are for legitimate or illegitimate purposes, we believe that the BOP should not allow their policy to blind them to the reality of the situation. Our review

⁴⁸ Reduction of recidivism is a worthy objective. At the penitentiary level, however, the number of inmates serving extremely long or life sentences must be considered. Many of these inmates will never leave BOP custody. For example, at USP Lewisburg, 36 percent of inmates are serving sentences of 20 years or more and 22.2% are serving life sentences.

shows that telephone abuse is a very serious problem in BOP institutions and we found many very serious and tragic outcomes from this abuse. The BOP must be flexible in addressing this problem and avoid over-reliance on general studies on the issue of the benefits of family contact.

VIII. The BOP's Misplaced Reliance on New Technology

A. Small Improvements with ITS II

ITS II was touted by many BOP officials as the solution to the problem of telephone abuse. This is far from the case. While ITS II is an improvement over ITS I in several ways, it will do little to aid the BOP in its monitoring and detection efforts. We also found that the BOP has postponed actions to address inmate telephone abuse because of the belief that new technology may alleviate some of the current problems, a belief that we believe is misplaced.

ITS II will provide a centralized system for telephone monitoring at the Central Office and features to be used in the detection of fraud of that system. ITS II also will be easier for SIS staff to use, provided that adequate instruction and guidance accompanies implementation. It also will be easier for inmates to use. Some of the new features of ITS II include "Called Party Blocking," which allows the called party to refuse a call by pressing a digit on the telephone keypad, thereby preventing that call and any future calls made from that number; "Time Between Calls," requiring a specified number of minutes between inmate calls; "Called Party Acceptance of Direct Dial Calls," requiring the called party to accept a direct dial call before being connected to the inmate; and "Initial and Intermittent Call Branding," in which a message would be broadcast to the called party that "brands" the call by indicating the inmate's first name and the fact that the call is originating from a federal prison. This message could be repeated intermittently throughout the call.

But ITS II will not in and of itself reduce inmate telephone abuse and the availability of the telephone system as a tool for inmates to commit crimes. Technology has not been developed that will make this possible. ITS II was designed for flexibility and its contract provides for technology updating. However, technological advances such as voice recognition technology, discussed below, are not on the near horizon.

ITS II has the ability to detect some types of three-way calls. According to ITS Chief David Woody, the technology is effective on only about 20 percent of calls – and even then it is only effective about 80 percent of the time. Because the technology is not reliable, if a three-way call is detected, it is not disconnected but simply marked for future review by the SIS. In this way, the system avoids disconnecting legitimate calls.⁴⁹

The BOP informed the OIG that three-way calls could be detected more reliably if local telephone companies were required to provide a detectable signal at the time of the implementation of the three-way call or call forwarding. BOP reported that they sought advice from the Federal Communications Commission on how to force local telephone companies to implement this signal, but were informed that legislative efforts to require this would be useless in light of the great opposition it would raise from the telephone companies.

Many features of ITS II will not be helpful to staff without proper training and other support. For example, much of ITS II's ability to produce reports is available with ITS I but has not been used because of lack of training. Placement by SIS telephone monitors of the alert function for targeted inmates is important, but the institutions still need additional resources and staff to monitor the alerted calls. ITS II creates more efficient managing of inmate accounts, but there remains no control to prevent inmates from simply exchanging account numbers to hide the identity of the caller. ITS II also creates a national database of telephone information that can be used by SIS personnel as a valuable investigative tool, but access to that database is generally restricted to the Central Office, and the Regional offices will have no access to ITS II at all. In addition, the BOP has no plans in place for how to analyze or use the data.

⁴⁹ The system can detect three-way calls when there is a soft click heard on the inmate phone line. Such clicks do not occur in all types of three-way calls or forwarded calls. The detection of the sound requires distinguishing the signal from similar sounds normally made by the inmate's voice and the background noise in the prison. The system can be easily defeated by intentionally making noise at the time of the signal or by other interference on the telephone line.

The BOP cannot rely on technology alone to prevent telephone abuse. The effective use of that technology is the critical area in which the BOP has thus far failed to commit sufficient resources and effort.

B. Failure to Coordinate within BOP on the Development and Implementation of ITS II

The OIG found that there had been virtually no communication between the developers of ITS II – the BOP's Inmate Telephone System Section – and the users of the system – the SIS offices and the Intelligence Section.

It is imperative that the Intelligence Section participate in the development of ITS II and take full advantage of any future advances in technology. Coordination between the two offices also will be necessary to ensure that the SIS staff monitoring the telephones receive adequate and continuing training on ITS II. As discussed above, advanced technology without accompanying policy and procedures is useless. Unless the Intelligence Section creates guidance for implementing ITS II, SIS staff will not properly or effectively use it.

According to David Woody, the Chief of the Inmate Telephone System, his section did not coordinate with the Intelligence Section during development of ITS I. Consequently, that telephone system was never tailored for investigative purposes and remained largely a "financial system" that kept track of the money inmates were spending and the profits the system was making. According to Woody, the Inmate Telephone System Section provided telephone monitoring equipment to the SIS training facility in Denver, Colorado, but did not believe it was its responsibility to train SIS and Intelligence personnel on the ITS system. This has resulted in a large gap between those who develop and run the system and those responsible for using the technology to monitor inmate telephone conversations.

At the outset of our review, we found that there had been little improvement in coordination between the Telephone and Intelligence Sections in the development of ITS II.⁵⁰ As of November 1998, we were aware of only

⁵⁰ The BOP hired Booz-Allen & Hamilton, Inc. in May 1996 to define requirements and alternatives for the ITS II system and create a request for proposal (RFP). Booz-Allen (continued)

one significant communication between the two sections: a February 1998 memorandum from Kevin Rooney, the Assistant Director for Administration, to the Correctional Programs Division requesting feedback about the possible features of the new ITS system. Correctional Programs recommended that all of ITS's existing features continue and that all of the new features be implemented. BOP's Office of General Counsel and the Federal Programs Branch also reviewed the proposal and found that the new features could be implemented without violating the settlement agreement in Washington v. Reno.

In November 1998, Woody told the OIG that the current Intelligence Chief better recognizes the value of the inmate telephone system as an investigative tool and was taking more interest in the ITS II project. He stated, however, that his section did not have the resources to train the SIS officers and intelligence personnel on ITS II. Despite the sentiment that coordination may be improving, the OIG did not find any tangible evidence that the Trust Fund Branch and the Intelligence Section were working together to develop ITS II. Woody told us that it was a priority when developing ITS II to create a system that would aid investigative efforts by producing reports that highlighted telephone numbers called by more than one inmate, a chronological list of an inmate's calls, and frequently dialed numbers. However, the ITS section's final decisions about ITS II were made without consistent consultation with the Intelligence Section on the development of the system.

The OIG made both the Trust Fund Branch and the Intelligence Section aware of its concerns about their lack of coordination in the development of ITS II, and our concern that a continued lack of coordination during the

(continued)

was responsible for coordinating the needs of different BOP entities and interviewed representatives from the Inmate Telephone Systems Branch, Trust Fund, Procurement, and Intelligence Sections. They also interviewed staff employed in the three different institutions in the Allenwood complex. However, we found that Booz-Allen's information gathering on the needs for security features in ITS II was extremely limited and evidenced a lack of understanding of SIS's needs. For example, Booz-Allen almost exclusively concentrated on fraud schemes rather than drug dealing or other illegal activities. In addition, they only spoke with SIS personnel at a single location, which we believe was insufficient to determine the full range of security needs.

implementation phase could result in reduced success in using ITS II. Both sides acknowledged the lack of coordination and informed the OIG that they planned to remedy the situation. The OIG's advice did not go unheeded and, as of January 1999, some coordination between the sections had begun. The two sections met several times and planned a training program for the regional SIS coordinators, who would then be available to train users at each institution in their region.

It is an improvement that the Regional SIS offices – which serve as a resource to institution-based staff on telephone security issues – will now be trained in the use of ITS II and responsible for training SIS staff in their regions. However, although the new system can be networked to BOP's Regional Offices, this is not within BOP's current plan. If decisions about the implementation of ITS II are left to wardens of individual institutions, it is imperative that they receive assistance to tailor the many available features to their institution. The Regional Office SIS personnel appear to be the most logical bridge between the Central Office Trust Fund ITS section and the wardens of each institution.

C. New Telephone Technology

In the course of our review, various SIS officers and one warden told us that they heard that certain BOP institutions had voice and key word recognition technology that was proving very useful in gathering intelligence on inmate activities. This assertion is not accurate – no BOP institutions have such technology. It was disturbing to the OIG that wardens and SIS officers believe that such technology exists within the BOP system when it does not. This is evidence of a lack of communication, coordination and training. Furthermore, the technology that does exist – speaker and speech identification – is extremely expensive and does not provide much hope for preventing telephone abuse in prison settings.⁵¹

⁵¹ The Department has initiated some research into the area of speaker identification and its use in a prison setting. The research was initiated by Paul Coffey, former Chief of the Organized Crime and Racketeering Section of the Department's Criminal Division in conjunction with the National Institute of Justice. A feasibility study was proposed in July 1996, but was delayed at BOP's request until it could complete the contract for ITS II. According to the BOP, investigators from Rome Laboratories, an Air Force laboratory in New York, continue to investigate the application of voice technologies to correctional (continued)

1. Speaker Identification

Speaker identification is the ability to distinguish speech patterns among multiple speakers to identify particular individuals. Using this technology, a telephone system could disconnect automatically if:

- the PAC number used to place a call does not match the voiceprint of the inmate speaking;
- the voiceprint of the party to whom the call is placed (or their phone number) does not match the voiceprint or phone number of one of the individuals on the access list;
- a third party, not on the access list, joins a conversation with someone on the access list.

Alternatively, the system could be designed to automatically record a conversation in the event of one these occurrences and alert prison staff.

Researchers at MIT's Lincoln Laboratory have reported that it is reasonable to expect a 95 percent probability of detecting an unauthorized speaker using such a system. However, a Department working group on this issue did not express much confidence in the computer's accuracy rate to justify the cost and maintenance of such a system. Current speaker identification technology requires a very controlled environment, an impossibility in an institutional setting, with widespread use of slang, foreign languages and accents, poor connections, and the background noise of a prison housing unit. The group did not think that speaker identification holds much promise for combating inmate telephone abuse in the foreseeable future.

2. Speech Recognition

With speech recognition, a computer recognizes key words that could be used to rapidly sift through large amounts of data to find items of interest. The

(continued)

institutions and will prepare a final report recommending further research in the areas of speech enhancement, speaker identification, and identifying the "gist" of a conversation through the identification of key words and phrases.

application of speech recognition technology to a prison setting is more problematic than speaker identification. The technology is designed to be used with cooperative users who want to be understood by the speech recognition system. In a correctional environment, the speakers attempt to keep from being understood by using slang or code words. Dialect and stress may also affect inflection and tone and therefore the ability of speech recognition technology to understand speech. Speech recognition would be difficult to use in prisons, where many use foreign languages.

It appears unlikely that speaker or speech recognition will help alleviate the problem of telephone abuse in the near future. Whether future technology may improve to the point where it will be useful is unknown. In the meantime, however, actions and improvements should not be delayed in waiting for a revolutionary new technology that may never come.

CHAPTER EIGHT RECOMMENDATIONS

Our review of the BOP's inmate telephone system found that a significant number of inmates use prison telephones to commit serious crimes – including murder, drug trafficking, and fraud. The BOP has been aware of this problem for more than a decade, but to date has taken limited corrective action to address this abuse.

Implementation of a new inmate telephone system – ITS II – will not be the cure all that some BOP officials apparently are counting on. In fact, given the lack of understanding and use of the security features in the existing telephone system, ITS II will have little impact on the BOP's efforts to detect telephone abuse by inmates.

The BOP deserves credit for the difficult job it does maintaining order in its institutions. However, it also has a duty to protect the public from inmates who continue to commit crimes from prison. The BOP's concentration on this first objective – maintaining order – has come at the cost of turning a blind eye to inmates who use prison telephones to commit serious criminal activity in the community.

Based on our review, we believe that the BOP should take steps to curb prison telephone abuse in four ways: 1) increased monitoring of inmate conversations and more efficiently targeted monitoring; 2) increased and more consistent discipline of telephone abusers; 3) proactive telephone restrictions for inmates who have a history of telephone abuse or a likelihood of abuse; and 4) refocusing SIS officers to detect and deter crimes committed outside the institution by inmates using BOP phones.⁵² We offer specific recommendations in each of these four areas.

⁵² Whatever substantive changes the BOP intends to make to inmate telephone privileges should be implemented through appropriate rulemaking procedures. The BOP bypassed this step when installing the original inmate telephone system, and this failure was partially responsible for the inmates' lawsuit in Washington v. Reno.

I. Monitoring of Inmate Telephone Calls

The BOP must increase the percentage of inmate telephone calls it monitors on an ongoing basis if it expects to make any headway on the problem of inmate telephone abuse. While additional resources will be helpful, the reality is that given the high volume of inmate calls, the only realistic solution is to reduce the call volume so that BOP staff assigned to this task can monitor a greater percentage of calls. Towards this end, we make the following recommendations:

1. The BOP should impose limits on all inmates' telephone privileges. The 1997 Wardens' Working Group recommended 300 minutes per month, an arbitrary figure arrived at without examining data on inmate telephone usage. The BOP should research this issue and develop a recommendation for limiting the number of minutes that inmates can use the telephone which takes into account inmate calling patterns and the number of calls that can be effectively monitored by available staff.
2. The BOP currently monitors less than four percent of all inmate calls. This is an unacceptably low percentage to detect and deter criminal conduct by inmates. We recommend that the BOP set a significantly higher goal and then calculate the resources needed to meet this goal. Undoubtedly, this will require two things: more staff assigned to monitoring inmate telephone calls and fewer inmate calls.
3. All the BOP institutions should have telephone monitors on duty at all times that prison telephones are available to inmates. Hours of telephone operation may have to be limited to make this possible. Our review showed that 19 of the 66 ITS institutions have monitors on duty less than 50 percent of the time the telephone system is operational.
4. The BOP must do a better job identifying inmates with a high probability of abusing their telephone privileges and institute a plan to proactively monitor their calls. Attempts in the past by the Intelligence Section to institute a proactive monitoring program have failed. We recommend that SIS Offices improve proactive monitoring at the institutions and train institution-level SIS officers in this proactive monitoring approach.

5. The BOP should install state-of-the-art recording equipment in all of its institutions. In addition, remote monitoring officers should be provided with computer monitors and sufficient information about inmates to allow them to effectively monitor calls. The SIS Office, working closely with the Inmate Telephone Section, should develop a comprehensive training curriculum and materials to teach telephone monitors how to most effectively use the ITS and ITS II equipment to detect criminal activity.
6. Telephone monitors at each institution should be permanent positions.
7. The BOP should develop a unit at the headquarters or regional level that could review calls identified by institutions as suspicious or translate calls made by targeted inmates that are in a foreign language.
8. The BOP should seek legislation to explicitly authorize it to use proceeds from the inmate telephone system to pay for monitoring inmate calls.

II. Discipline of Inmates

9. During our review, we discovered cases in which inmates retained full telephone privileges after being convicted of a crime involving use of prison telephones. We recommend that the BOP develop and enforce policies to ensure that administrative action is quickly taken against inmates who abuse their telephone privileges, particularly those inmates convicted of crimes stemming from use of prison telephones.
10. The BOP should develop and implement policies that mandate restriction of telephone privileges as the preferred sanction for inmate telephone abuse. Subsequent violations of BOP telephone policies should result in increased sanctions that include loss of telephone privileges. Inmates who commit crimes using prison telephones should have their privileges revoked.
11. The BOP should consider designating certain institutions or wings of institutions as housing units for inmates whose telephone privileges have been revoked or restricted. This would alleviate the problem of inmates

without telephone privileges getting other inmates to make calls for them.

12. The BOP should examine the possibility of making use of coded language by inmates over the telephone a disciplinary violation in certain circumstances. Such a rule would allow the BOP to restrict or suspend an inmate's telephone privileges when an SIS officer finds an inmate engaging in suspicious coded conversations. As a model, the BOP should look to its existing correspondence regulations that contain a provision allowing wardens to reject correspondence that contains a code.
13. The BOP should use the STG "phone abuse" category more frequently and set standards for its use. Such entries will be useful when the inmate is transferred to a new institution.

III. Proactive Restrictions of Telephone Privileges

14. We recommend that the BOP develop and implement regulations that permit restriction of inmate telephone privileges as a matter of classification. The BOP should explore whether BOP Headquarters or staff at the regional level are better positioned than institution-level unit teams to make decisions about proactively restricting an inmate's telephone and correspondence privileges as a matter of classification.
15. As an additional safeguard to deter potential criminal conduct, the Department should educate prosecutors about the availability of court orders restricting an inmate's telephone privileges in racketeering and drug cases in which continued criminal activity from prison is likely. The Department should also consider seeking legislation to permit similar court orders in all cases in which the government can make a showing that the defendant should not be entitled to telephone privileges because of a prior history of telephone abuse.
16. The Department should emphasize to U.S. Attorneys' Offices the need to inform the BOP of inmates who pose special risks of committing serious crimes while incarcerated, as outlined in the Attorney General's

May 7, 1998 letter on this subject. As of the fall of 1998, the BOP had received only two such notifications.⁵³ These notifications are crucial because they fill gaps in the BOP's knowledge about the inmate's history and puts the BOP on notice of the risk posed by the inmate. However, given the BOP's failure to properly monitor high risk inmates after either court order or notice from prosecutors, it is advisable that a reporting system be set up to assure U.S. Attorneys' offices that proper measures have been taken and attention given to the situation after such a notification.

IV. Role of SIS Officer

17. Our review found that SIS officers at BOP institutions spend far too little time detecting and deterring criminal conduct committed by inmates using prison telephones. The SIS's mission should be expanded to include a more substantial focus on the detection of crimes by inmates in BOP custody. This could be accomplished through additional training for SIS staff, greater communication between the SIS and other law enforcement agencies, and better gathering of intelligence on inmates. In addition, the BOP should revise its procedures to require SIS staff to ensure that each number listed on an inmate's telephone access list is thoroughly investigated prior to approval, especially with high-risk inmates.

⁵³ As of August 1999, the BOP had received only six such notifications.

CHAPTER NINE

CONCLUSION

Permitting inmates access to prison telephones and protecting the public against crimes facilitated through use of prison telephones present a complex balancing of interests. At the present time, the balance appears tilted too far in favor of inmate access. Our review highlighted the serious nature of inmate abuse of prison telephones, including murders and drug deals arranged using BOP telephones. Clearly, the BOP's current policy of unlimited access to telephones for the vast majority of inmates – coupled with its monitoring of less than four percent of all inmate conversations – needs serious examination and revision.

The current inmate call monitoring system is virtually useless. The low number of crimes or administrative violations detected and the high number of crimes likely being committed should indicate to the BOP that major changes are needed. In addition, our interviews of telephone monitors left us with the impression that they are overwhelmed and untrained.

The BOP has taken some action to address the problem of inmate telephone abuse. As outlined in the report, it approved raising disciplinary sanctions for telephone abuse, created 24 new positions to work with outside law enforcement, prepared a guide to aid the field in telephone monitoring, added an STG category for phone abuse, and worked on improvements for the second generation of ITS.

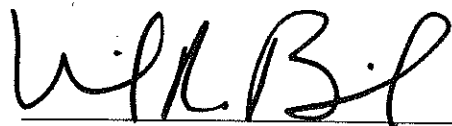
However, we conclude that these actions are insufficient to address the problem of telephone abuse. The increase in the disciplinary sanctions have not yet been implemented. Guidance to the field has generally not been followed, including instruction on a proactive approach to inmate telephone abuse, the use of alerts, and the use of the STG category. While some new tools for telephone monitoring have been created, we believe these tools have not been adequately used.

It is clear from our review that ITS II, the next generation prison telephone system, is not the panacea to the problem of inmate telephone abuse. It also appears that the BOP has refrained from taking substantive steps to

address this issue for fear of reopening the litigation in Washington v. Reno. While it is possible that necessary changes to the current telephone system may provoke inmates to file suit, it is our opinion that the BOP will prevail in any litigation. Notwithstanding the possible litigation risks, the current situation is untenable and demands that the BOP make dramatic changes.

Such changes will no doubt be expensive, but much of this cost can be recovered if the Department obtains legislation allowing it to pay for telephone monitoring from revenue generated by inmate calls. A significant portion of the \$71 million in profit reaped from the telephone system during the past seven years should be used to ensure that the system operates safely and that inmates do not have the opportunity to use it to endanger or defraud others. And while the cost may be significant, we believe based on this review that the problem of inmate telephone misuse is widespread and the consequences serious enough that significant amounts of time and money should be expended to address it.

August 12, 1999

A handwritten signature in black ink, appearing to read "W. R. B. Bromwich", written over a horizontal line.

Michael R. Bromwich
Inspector General

Glenn A. Fine
Director, Special Investigations
and Review Unit

Tamara Jaycox Kessler
Special Investigative Counsel

Adrienne M. Flave
Inspector

Jeffrey D. Long
Investigator

APPENDIX 1

WASHINGTON V. RENO

I. History of the lawsuit

In June and July 1993, inmates at the Federal Medical Center in Lexington, Kentucky (FMC Lexington) filed two lawsuits against BOP, alleging that installation of the new debit-based Inmate Telephone System (ITS) violated their first amendment rights. The inmates sought to enjoin BOP from replacing FMC Lexington's existing collect-call telephone system with a system that would require inmates to have money in their commissary accounts to pay for telephone calls.⁵⁴ On July 9, 1993, the district court stayed implementation of ITS at FMC Lexington until the court could address the inmates' complaint. On July 22, 1993, the court consolidated the two lawsuits and appointed counsel for the plaintiffs.

One day prior to this case consolidation, BOP published a proposed rule in the Federal Register seeking to "amend its rule on Telephone Regulations in order to provide for the operation of a debit billing system for inmates." On August 11, 1993, the plaintiffs filed a motion to show cause why the defendants should not be held in contempt for violating the court's stay order by publishing the proposed regulations and sought to have the proposed rule enjoined. On August 18, 1993, the district court entered a preliminary injunction requiring BOP to hold open the comment period on the proposed rule for an additional 60 days and to consider comments from plaintiffs and their counsel. On September 13, 1993, the district court granted the plaintiffs' request for a temporary restraining order prohibiting BOP from implementing ITS at any additional correctional institutions or charging the commissary fund with any expenses connected to ITS pending a hearing on the complaint.

On September 22, 1993, the plaintiffs filed a motion to certify a nationwide class of inmates. That same day, friends and relatives of the named plaintiffs filed a motion to intervene as plaintiffs in the case in order to assert

⁵⁴ According to Federal Programs attorneys and BOP officials, the inmates were a very sympathetic group of women concerned about keeping in touch with their spouses and children. They were not, in many respects, "typical" BOP inmates.

claims that their right to privacy had been infringed by BOP rules that require recipients of inmate calls to provide personal background information to prison authorities. In October 1993, the district court granted the plaintiff's motion and expanded the case from a lawsuit affecting FMC Lexington to a nationwide class action.

On October 13, 1993, the district court enjoined BOP from spending any commissary funds on the new telephone system and enjoined further implementation of ITS unless collect call systems also were made available to inmates. The court further ordered BOP to make a collect call system available, within 60 days, to inmates where ITS had already been installed. The court enjoined BOP from limiting telephone privileges of inmates who refused to participate in the Inmate Financial Responsibility Program and from restricting inmate collect calls to numbers on their telephone lists. The court also noted the "complete dereliction" of BOP in failing to comply with Administrative Procedures Act requirements for amending the existing rules governing inmate telephone use.

On November 15, 1993, BOP filed a motion for partial stay pending appeal of the injunction. The U.S. Court of Appeals for the Sixth Circuit granted the motion on December 7, 1993. The stay allowed BOP to continue operating ITS at institutions where it had been installed prior to October 13, 1993, and allowed BOP to use commissary monies to finance the system's operation. However, the district court's injunction remained in place with respect to institutions in which ITS had not yet been installed.

On April 4, 1994, BOP published in the Federal Register a final rule concerning inmate telephone use. According to BOP, these amendments to the telephone regulations were intended to "further the Bureau's core value of sound correctional management both by recognizing the role of inmate financial responsibility and by further minimizing the security problems and criminal activity associated with inmate telephone use. . . ." The rule states that the previous regulations had recognized that inmate telephone calls would ordinarily be collect, but that technological developments now made it possible for BOP to install a debit-billing telephone system.

II. The Ruling of the Sixth Circuit

In an opinion issued September 26, 1994, the Sixth Circuit found that BOP's final rule addressed the concerns raised by the plaintiffs and had altered previously existing ITS procedures in response to many of those concerns.⁵⁵ Consequently, the appellate court considered only the plaintiffs' argument that ITS had a chilling effect on the inmates' and intervening plaintiffs' right to free speech and that use of the Commissary Fund monies to install and operate the system violated the statutory provisions concerning proper use of the Fund. Based on the new rules promulgated by BOP, the appellate court found that the plaintiffs' likelihood of success on the merits of their First Amendment claims was substantially lessened and it vacated the district court's injunction. However, it ruled that BOP could not use inmate commissary trust funds to pay for components of ITS that were primarily for institutional security.

III. The Case on Remand

The plaintiffs subsequently filed a motion requesting that BOP be enjoined from implementing the collect-call system it had added to ITS in several institutions to comply with the requirements of the first preliminary injunction. In addition, the inmates asked the court to reinstate the portion of the first injunction that barred the use of the Commissary Fund to pay for ITS equipment and personnel. In February 1995, the district court reinstated the injunction against use of Commissary Fund monies to pay trust fund supervisors and ITS telephone technicians, but declined to enjoin BOP from installing ITS and the collect-call system in new prisons.

IV. The Settlement Agreement

In May 1995, BOP entered into mediation with the plaintiff's counsel and reached a settlement agreement that was approved by the district court in November 1995. The agreement provides that BOP will procure a new

⁵⁵ The plaintiffs conceded at oral argument before the Sixth Circuit that, with promulgation of the new rule, their due process and Administrative Procedures Act claims were no longer relevant as bases for entry of a preliminary injunction.

telephone system with both direct dial debit and collect call features. For four years following the award of the contract for the new telephone system, BOP will allow inmates to make up to 120 minutes of collect calls per month unless they refuse to participate in the Inmate Financial Responsibility Program (FRP) or are detained in a Special Housing Unit.

The settlement agreement does not stipulate the level of debit calling, except that inmates who refuse to participate in the FRP will be allowed 60 minutes of debit calling a month. After a new contract is awarded, all BOP inmates will be limited to an approved calling list of 30 numbers. Inmates may make up to three changes a month to their calling list and these changes must be made within five days by the institution. If, after the four year period, BOP decides to eliminate the collect-calling option, it must publish its intention to do so in the Federal Register and allow time for comment from inmates and the public.

The settlement agreement also stipulated that from the settlement date until the time the new telephone system was implemented, BOP would operate an inmate telephone system "substantially equivalent" to the system in existence at each institution prior to the court's injunction. Attached to the settlement agreement are lists of: 1) institutions with the former collect calling telephone system that does not restrict the number of collect calls or require that numbers be placed on an inmate's official telephone list (the "Unlimited Collect Calling" institutions); 2) institutions that provide debit calls, do not provide unlimited collect calling, and limit telephone calls to numbers on the inmate's official telephone list (the "Debit Calling" institutions); and 3) institutions that provide debit calls, permit inmates to make an unlimited amount of collect telephone calls, and limit telephone calls to numbers on the inmate's official telephone list (the "Debit/Collect Calling" institutions). New institutions were to be opened as "Debit/Collect Calling" institutions as soon as practicable.

BOP acknowledged in the settlement agreement that it has no policy or practice of precluding inmates from making international collect calls. BOP agreed to solicit bids for international debit and collect calling when it solicited bids for the new ITS, but was not required under the agreement to guarantee that the successful bidder would provide international collect calls.

Under the agreement, rates for debit calling charged to the inmates are not to exceed the highest debit rates charged to inmates in the state correctional facility having the highest debit telephone rates. BOP also agreed to credit

\$4.0 million dollars to the Commissary Fund to be used for any purpose not prohibited by BOP policy that accrues to the benefit of the inmate body as a whole. BOP also agreed to credit to the Commissary Fund an amount equal to 50 percent of the salaries and benefits of the Trust Fund supervisors for as long as the supervisors have responsibilities for supervising non-commissary and non-Trust Fund functions.

Finally, and perhaps most importantly for the purposes of this review, the settlement agreement stipulates that it does not limit or interfere "with the discretion of the Bureau of Prisons and the Wardens of correctional institutions operated by the Bureau of Prisons to limit inmate telephone privileges . . . to maintain the security or good order of the institution, or to protect the public, . . . or as a disciplinary sanction. . . ."

The settlement agreement will remain in effect until approximately January 2002, four years after BOP awarded the contract for the new inmate telephone system to GTE. Class members who believe that BOP has not complied with the agreement are required to pursue a number of possible administrative remedies, but ultimately can file an action to enforce the settlement agreement in the United States District Court for the Eastern District of Kentucky.

APPENDIX 2

ITS II FEATURES

I. Inmate Telephone Account Restrictions

- As with ITS I, the system can control who inmates call. However, ITS II offers no new controls to safeguard against an inmates' use of another inmate's phone access card.
- Like its predecessor, ITS II will restrict inmate calls to telephone numbers on pre-approved lists. ITS II will connect the inmate's call only if the PAC matches a telephone number on the approved list for that PAC account.
- ITS II will be able to restrict inmates to a specific number of telephone calls and restrict the length of time an inmate may talk on the telephone each day, week, or month. ITS I also could perform these functions.
- ITS II can restrict inmates, by housing unit, to a calling schedule that limits their telephone access to specific days of the week or hours of the day. ITS II also can restrict inmates to specific telephones, thereby preventing inmates in one housing unit from making calls in another housing unit. ITS I also can perform these functions.
- ITS II can control the length of inmate telephone calls. It can also impose a specified waiting period between calls. Currently, inmates can immediately redial the same telephone number after their call is automatically disconnected after 15 minutes.
- ITS II can restrict inmates to debit or collect calls. In addition, it can restrict specific telephones within the institution to only debit or collect telephone calls. ITS I can also perform these functions.
- ITS II will be able to restrict individual inmates from placing any telephone calls for a defined period of time. However, because the ITS system is activated by a PAC number, the system does not prevent an inmate whose telephone privileges have been suspended from using another inmate's PAC number to make a call.

II. Special Capabilities of ITS II

In addition to basic fraud and investigative control features, ITS II also has several advanced capabilities. First, all calls placed by inmates will be "branded." This means that a recording will be played during the telephone call stating that the call is being made from a federal correctional institution. According to the Chief of the ITS Section, David Woody, this feature will be included in the basic class of service provided to all institutions. The announcement will be made at the start of each call and then at random intervals during the call. This feature will help curb inmate fraud schemes by ensuring that recipients of any calls from inmates know that call is being made by an inmate from a federal prison.

With ITS II, the SIS office at each institution will have the ability to turn on the alert function in order to monitor inmates of special concern without going through the ITS business office. With ITS I, the alert function could only be turned on by the business office.

ITS II also offers a "call denial" feature that allows the called party to reject telephone calls from inmates without being intimidated to accept the call. This is accomplished through the call-branding feature and a delay in connection time that will allow the called party time to hang up. In addition, called parties are informed by a recording that they can press a number on their telephone keypad to prevent future calls from that inmate. BOP sees this feature as a potential replacement for the current practice of sending out notice letters to individuals placed on an inmate's calling list.

Another advantage of ITS II, and more specifically of having a centralized telephone system, is that ITS II creates a BOP-wide database of numbers called by inmates. This will allow BOP to compare, search, and identify common telephone numbers called, or numbers on more than one inmate's calling list, for inmates at every BOP institution.

III. ITS II Inmate Telephone Call Reports

ITS II also will provide improved inmate telephone call reports that can be more easily produced by BOP staff in each institution. These reports will

be used by the ITS business staff to detect and combat fraudulent activity, and by SIS staff to combat telephone abuse.

ITS II reports will include:

- calls made by inmates who have been placed on alert or calls made to specific telephone numbers that have been placed on alert;
- telephone numbers called by more than one inmate;
- frequently dialed numbers;
- telephone numbers listed on more than one inmate's account;
- telephone numbers called more than a specified number of times in a given time period;
- inmates who have used the telephone for a specified number of minutes in a given period of time;
- inmates who exceed a designated "normal" quantity of calls, or call minutes, in a defined time period;
- telephone calls by groups of inmates (e.g., all telephone calls placed by members of the Aryan Brotherhood at an institution);
- restricted telephone accounts; and
- telephone call activity for specific telephone accounts (e.g., high risk and telephone abuse inmates).

IV. Detection of Certain Three-Way Calls

According to the BOP, ITS II has the capability to identify certain types of three-way calls. The calls that can be detected are those that make a click when the three-way call is completed or the call is forwarded. Such clicks do not occur in all types of three-way calls or forwarded calls. According to Woody, the technology is effective on only about 20 percent of calls – and even then it is only effective about 80 percent of the time. The detection of the sound requires distinguishing the signal from similar sounds normally made by the inmate's voice and the background noise in the prison. The system can be easily defeated by intentionally making noise at the time of the signal or by other interference on the telephone line. Because the technology is not

reliable, if a three-way call is detected, it is not disconnected but simply marked for future review by the SIS. In this way, the system avoids disconnecting legitimate calls. The BOP informed the OIG that three-way calls could be detected more reliably if local telephone companies were required to provide a detectable signal at the time of the implementation of the three-way call or call forwarding.

ITS II can also identify when extra digits are dialed by an inmate, which may indicate an attempt at call forwarding, but it does not have the ability to terminate these calls or notify the telephone monitor when the extra digits are dialed. David Woody told the OIG that BOP is waiting until technology to detect three-way calls is further developed before programming ITS II to disconnect suspected three-way calls.

APPENDIX 3

INFORMATION FROM THE FBI: CRIMES BY INMATES USING PRISON TELEPHONES

The following cases were reported by FBI field offices in response to a request from the OIG for information on criminal investigations arising from inmate telephone abuse. The number of FBI investigations listed likely underreports the total number of cases because the FBI does not index cases based on their location (i.e., federal prison) or by use of a prison telephone. Consequently, the field offices responding to our survey relied on staff memories to prepare their responses.

1. The Atlanta Division reported four investigations, all at USP Atlanta. Three involved smuggling illegal narcotics into the institution, and one involved financial fraud.
2. Four investigations were reported by the Baltimore Division, all involving inmates using prison telephones to arrange deliveries of illegal narcotics into federal correctional facilities.
3. The Chicago Division reported an ongoing investigation in which an inmate has been making three-way calls to known drug-related telephone numbers in the Chicago area and in other parts of the country.
4. The Dallas Division successfully prosecuted an inmate, his spouse, and another individual for introducing drugs into FCI Seagoville, Texas. The inmate used coded language in telephone calls to the inmate's spouse to arrange deliveries of ten grams of heroin at a time. A pending case in this division involves a scheme in which an inmate used coded language in telephone calls to his girlfriend to arrange drug deliveries into the FCI.
5. The Florence Prison Complex in Colorado, according to the FBI Denver Division, aggressively monitors telephone conversations of inmates known to have been involved in narcotics trafficking. This has resulted in two recent investigations of illegal narcotics smuggling into the institution.
6. The Detroit Division reported two ongoing investigations of inmates managing drug organizations from inside a federal prison.

7. The Indianapolis Division recently used recorded telephone conversations of inmates to confirm that inmates in five different investigations arranged for the delivery of illegal narcotics into USP Terre Haute, Indiana. In a similar case, an inmate was observed acting strangely during a visit, was placed in a "dry cell," and subsequently defecated six balloons containing more than five grams of heroin. The investigation revealed that the inmate made arrangements for the drug delivery over the telephone.
8. The Jacksonville Division reported two cases, including an investigation of inmates using the prison telephones to conduct telephone fraud schemes involving securities. The second investigation involves bribery, obstruction of justice, and international money laundering. In this investigation, the FBI uncovered numerous third-party calls from the inmate to co-conspirators using a coded language, as well as calls to inmates at other institutions.
9. The Kansas City Division reported four cases in which inmates used prison telephones to arrange for the introduction of illegal drugs into federal facilities.
10. A husband and wife team were prosecuted in the Milwaukee Division when the investigation revealed telephone conversations discussing smuggling marijuana, cocaine, and heroin into FCI Oxford, Wisconsin. A review of an inmate's telephone calls also resulted in five convictions in the Milwaukee Division for smuggling 14 balloons of methamphetamine into the prison through the visiting room. Review of another FCI Oxford inmate's telephone conversations revealed that he had used prison telephones to orchestrate drug deals in the community that involved more than five kilos of cocaine.
11. The Minneapolis Division is investigating an inmate's plan to introduce marijuana into the institution, and has transcribed 30 pertinent telephone conversations. This division also has three ongoing investigations in which convicted drug dealers continue to run their drug operations by making telephone calls from prison to their co-conspirators.
12. An inmate at the Metropolitan Detention Center in New York used a pay telephone to contact his wife who arranged conference calls in coded language to facilitate their illegal narcotics business.
13. During the investigation of a drug ring in the community, the Oklahoma City Division discovered the involvement of an inmate at FCI El Reno.

Subsequent monitoring of the inmate's telephone calls by BOP revealed that he was using prison telephones to further illegal drug transactions both inside and outside prison.

14. The Portland Division reported seven investigations concerning the use and/or abuse of telephone privileges by inmates in federal facilities.
15. The San Diego Division reported one large investigation of an international drug trafficking ring being run by an inmate from the Metropolitan Correctional Center in San Diego. During a seven month period, 900 recorded telephone calls from the institution were subpoenaed that revealed evidence of continued drug trafficking by the inmate. The inmate and several associates, some of whom were other inmates, were either convicted or pleaded guilty. Some of these calls led to a separate DEA undercover operation that resulted in two additional arrests.
16. The FBI's Tampa Division received information from a Organized Crime Drug Enforcement Task Force that certain Colombian drug traffickers had been able to continue their drug business from prison using a Colombian connection to facilitate three-way calling.

APPENDIX 4

INFORMATION FROM THE DEA: CRIMES BY INMATES USING PRISON TELEPHONES

The following cases were reported by DEA field offices in response to a request from the OIG for information on criminal investigations arising from inmate telephone abuse. The number of DEA investigations listed likely underreports the total number of cases because the DEA does not index cases based on their location (i.e., federal prison) or by use of a prison telephone. Consequently, the field offices responding to our survey relied on staff memories to prepare their responses.

- 1) An inmate in BOP custody since 1992 has used the telephones for more than two years to direct the movement of drug proceeds, provide contacts to drug traffickers, and arrange drug transactions in connection with marijuana smuggling and distribution activities. It does not appear that BOP had knowledge of the inmate's activities and his telephone privileges were not restricted in any way.
- 2) Two inmates in the Federal Detention Center in Tallahassee, Florida used the prison telephones to arrange a 250-pound marijuana deal in October 1997.
- 3) An inmate in FPC Yankton, South Dakota used prison telephones to direct his wife to continue methamphetamine and cocaine transactions and laundering of drug proceeds. BOP was not aware of the inmate's activities and his telephone privileges were not restricted after the inmate was indicted.
- 4) An inmate at FCI Ray Brook used prison telephones to contact cocaine and heroin suppliers in Cali, Colombia, and to coordinate importation of drugs into the United States. BOP was not aware of the inmate's activities and his telephone privileges were not restricted, even after conviction.
- 5) An inmate at FCI Beckley, West Virginia, used prison telephones to arrange drug transactions and launder money. BOP was aware of the inmate's activities and subsequently transferred him to a different facility.
- 6) An inmate at FCI Fairton, New Jersey, used prison telephones to orchestrate drug deals by calling family members on his approved

telephone list and having them forward his call to his criminal associates. BOP was not aware of the inmate's activities.

- 7) An inmate at FCI Fort Dix, New Jersey, used prison telephones to arrange multi-kilogram cocaine and heroin deals and transportation of the drugs from New York to Baltimore. The inmate used telephones in the prison library where he worked. BOP was unaware of the inmate's activities until advised by the DEA at the conclusion of the investigation. The inmate was not disciplined by BOP for this activity, but later had his telephone privileges restricted based on unrelated telephone abuse.
- 8) An inmate at FCI Greenville, Illinois, used prison telephones to smuggle marijuana into the institution. BOP was not aware of the inmate's activities until advised by the DEA.
- 9) An inmate at MCC New York used prison telephones to arrange for heroin to be brought into the prison. BOP was not aware of the arrangements until informed by the DEA. The inmate was transferred and it appears that his visiting and telephone privileges were restricted for some period of time.
- 10) Two inmates are currently under investigation for using prison telephones to conduct a heroin importation and distribution ring in New York City. The inmates were incarcerated in separate facilities and communicated with each other by calling one of the defendant's attorneys and being conferenced together. BOP was unaware of this activity.
- 11) Three inmates in two separate facilities used prison telephones to distribute cocaine and heroin outside prison. One of the inmates also used the telephone to retaliate against a government witness. BOP was not aware of these activities.
- 12) Four inmates at FCI Otisville, New York, used prison telephones to arrange for heroin to be smuggled into prison. BOP was not aware of this activity until notified by the DEA. It appears that these individuals lost their telephone privileges for some period of time.
- 13) The DEA noted 13 cases in which federal inmates were housed temporarily at state or local facilities and used prison telephones to conduct criminal activities. It does not appear that any of these

inmates' privileges were restricted when they were returned to federal custody.

APPENDIX 5

LEGAL ANALYSIS: RESTRICTIONS ON INMATE CORRESPONDENCE AS A MATTER OF CLASSIFICATION

We found only one case that examines the constitutionality of Section 540.15. In Gilliam v. Quinlan, 608 F. Supp. 823 (S.D. NY 1985), an inmate sued BOP for restricting his mailing privileges under Section 540.15 and claimed violation of his first amendment rights. The inmate was notified that he was being placed on a restricted mailing list because a witness had informed prison officials that he had sent her threatening letters. The notice informed the inmate that he was permitted to correspond with his mother and sister but had to seek prison officials' approval if he wished to correspond with others.

The court in Gilliam cited two prior cases in which prison officials had limited inmate correspondence. In Schlobohm v. United States Attorney General, 479 F. Supp. 401 (M.D. Pa. 1979), an inmate was disciplined and placed on a restricted mailing list for violating the correspondence regulations by corresponding with an inmate at another penal institution. The district court found the regulation prohibiting inmate-to-inmate correspondence to be constitutional. It further found that an indefinite mail restriction was a valid use of the prison administration's disciplinary power. The Gilliam court cited another case in which the Middle District of Pennsylvania struck a different balance a year later. In Intersimone v. Carlson, 512 F. Supp. 526 (M.D. Pa. 1980), the prison administration placed an inmate on restricted general correspondence at the sentencing judge's request because the inmate had continually attempted to communicate with the jurors who had convicted him, notwithstanding the judge's order not to do so. The court found that prison officials had a legitimate purpose in restricting the inmate's correspondence, but that the general restriction was "an unreasonable, arbitrary and purposeless infringement of the First Amendment." 512 F. Supp at 530. The court concluded that a "mutual accommodation between the First Amendment and the government's interest in preserving the jury system could have been achieved merely by prohibiting Plaintiff from sending correspondence to jurors in the criminal trial." Id.

The district court in Gilliam used the standard articulated in Procunier v. Martinez, 416 U.S. 396, 413 (1974), to determine whether regulations infringing on a prisoner's right to communicate with others by mail furthers an "important or substantial governmental interest unrelated to the suppression of

expression" and is "no greater than is necessary or essential to the protection of the particular governmental interest." The court held, however, that it did not need to decide the extent of the plaintiff's First Amendment rights or whether the regulation was unconstitutional on its face or as applied to the plaintiff. The court concluded only that the plaintiff had not failed to state a constitutionally cognizable claim in his complaint and that prison officials had not offered a sufficiently cogent justification for application of the regulation to the plaintiff to obtain summary judgment on the merits. The court then granted BOP's motion for summary judgment on other grounds. 608 F. Supp. at 836.⁵⁶

Since the time of these opinions, however, the Supreme Court has crafted a different standard for the review of prison administrative decisions. As discussed in Chapter 3, in Turner v. Safley, 428 U.S. 78 (1987), the Supreme Court held that when a prison regulation impinges on an inmate's constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests.⁵⁷ The Supreme Court held that such a

⁵⁶ Other cases addressing the issue of restricted correspondence stem from court orders limiting correspondence and not from prison limitations. See e.g., Guajardo v. Estelle, 580 F.2d 748 (5th Cir. 1978)(regulations in Texas state prisons restricting all inmates to correspondence with family and up to ten other persons with prior approval of the institution was a prior restraint and violated the inmates' First Amendment rights); United States v. Wheeler, 640 F.2d 1116 (9th Cir. 1981)(on remand, the district court should consider the necessity of restricting the inmate's communications with ten named individuals and whether there were available alternatives to such restrictions); United States v. Holloway, 740 F.2d 1373 (6th Cir. 1984)(district court order that the inmate not communicate with anyone in prison during her incarceration was "likely to aid rehabilitation by denying her access to the cause and instrumentality of her crime and also protects the public from future tax frauds," but that order that she could communicate only with her relatives, legal counsel and other recognized counselors imposed a restriction on the inmate which, "because of its breadth, does not bear a logical relationship to the criminal conduct in which has engaged."

⁵⁷ Although most cases reviewing prison regulations use the Turner v. Safley standard, the court in Washington v. Reno, 35 F.3d 1093, 1099 (6th Cir. 1994), seemed to express some doubt when it found that it was not necessary to resolve the issue of whether the government must establish only that a restriction on an inmate's rights "is reasonably related to legitimate penological interests," Turner v. Safley, 482 U.S. 78, 89 (1987) (deferential standard applied to communication entering an institution), or whether the government must show both that the regulation furthers "an important or substantial governmental interest unrelated to the suppression of expression" and that the limitation on the First Amendment freedoms is "no greater than is necessary or essential to the protection of the (continued)

standard is necessary if "prison administrators, and not the courts, are to make the difficult judgments concerning institutional operations. Subjecting the day-to-day judgments of prison officials to an inflexible strict scrutiny analysis would seriously hamper their ability to anticipate security problems and to adopt innovative solutions to the intractable problems of prison administration." Id.

The Seventh Circuit case of U.S. v. Sotelo, 94 F.3d 1037 (7th Cir. 1996) is the only case we found to have discussed Section 540.15 since the Turner v. Safley decision. In Sotelo, however, the court found that the district court did not have authority to order restrictions on an inmate's communications with the outside world, but that BOP has authority to order such restrictions under 540.15(a)(5). The court then held that the issue of the constitutionality of any potential restrictions by the BOP were not yet ripe for review. 94 F.3d at 1041, fn. 3.

(continued)

particular governmental interest involved." Procunier v. Martinez, 416 U.S. 396, 413 (1974)(stricter standard applied to correspondence from inmates to individuals outside the prison)(overruled as standard to be applied to incoming correspondence in Thornburgh v. Abbott, 490 U.S. 401 (1989)).

Table 1

Inmate Telephone Activity and BOP Practices

Name of Institution	Inmate Population	Average Number of Connected Calls Each Day	Percentage of Calls Monitored Live	Percentage of Calls Monitored from Recordings	Percentage of Population Making More than 25 Calls Each Day	Number of Hours Each Day No Staff Assigned to Monitor
ALDERSON	639	812	0.4%	0.0%	0.6%	6
ALLENWOOD, FPC	707	931	0.3%	0.8%	0.1%	17
ALLENWOOD, LOW	1244	1597	3.9%	0.3%	0.1%	1
ALLENWOOD, MED	1074	1468	2.4%	0.3%	0.0%	0
ALLENWOOD, USP	959	1336	4.5%	0.7%	1.2%	0
ATLANTA	2623	2670	4.7%	0.8%	0.6%	0
BASTROP	1198	2282	1.7%	1.5%	0.7%	10
BEAUMONT	3284	7961	1.6%	1.1%	0.8%	2
BECKLEY	1428	3010	2.2%	0.0%	0.6%	10
BIG SPRING	1050	1136	2.6%	0.4%	2.9%	10
BUTNER, LOW	1124	388	1.0%	0.0%	1.4%	10
BUTNER, MED	1022	1483	2.0%	0.3%	0.9%	9
CARSWELL	765	786	0.9%	0.0%	0.2%	10
COLEMAN	3603	7969	1.4%	0.1%	1.2%	6
CUMBERLAND	1245	2085	2.4%	0.5%	1.2%	13
DUBLIN	1400	1124	0.0%	0.0%	0.1%	6
DULUTH	583	534	1.9%	0.1%	0.5%	0
EGLIN	840	2565	1.3%	0.0%	0.6%	2
ELKTON	1844	3053	0.3%	0.4%	2.4%	10
ENGLEWOOD	954	1098	2.3%	1.2%	0.7%	3
ESTILL, FPC/MED	1178	1884	1.8%	0.3%	0.9%	9
FAIRTON, FPC/MED	1150	2456	1.6%	0.0%	1.4%	1.5
FLORENCE, ADM	418	41	100.0%	7.4%	0.0%	0
FLORENCE, USP	1039	683	15.4%	0.9%	0.1%	0
FLORENCE, FPC/MED	1502	458	15.5%	0.0%	0.2%	0
FORREST CITY	1608	724	73.2%	2.0%	0.2%	0
FT. DIX-EAST	1979	5917	0.3%	0.3%	0.2%	16
FT. DIX-WEST	1889	5867	0.2%	0.0%	1.1%	16
FT. WORTH	1453	1479	1.1%	0.3%	0.4%	0
GREENVILLE	1256	1807	0.8%	0.0%	1.7%	1
GUAYNABO	858	2000	0.0%	0.0%	1.5%	1
JESUP	1460	2380	0.8%	0.7%	0.2%	12
LEAVEWORTH	1721	2165	4.9%	0.8%	0.0%	0
LEWISBURG	1507	3720	2.3%	0.7%	0.2%	0
LOMPOC	909	983	3.7%	0.2%	0.0%	8
LOMPOC	1925	1475	1.3%	0.3%	0.1%	0
LORETTO	818	1387	1.1%	0.0%	1.4%	8

Source: OIG Survey of 63 BOP ITS facilities, 1998.

Table 1

Inmate Telephone Activity and BOP Practices

Name of Institution	Inmate Population	Average Number of Connected Calls Each Day	Percentage of Calls Monitored Live	Percentage of Calls Monitored from Recordings	Percentage of Population Making More than 25 Calls Each Day	Number of Hours Each Day No Staff Assigned to Monitor
MANCHESTER	1358	437	16.2%	2.7%	0.0%	4
MARIANNA	1339	1158	3.5%	1.1%	0.1%	10
MARION	539	567	6.5%	1.8%	0.5%	0
MC KEAN	1313	1715	1.1%	0.2%	0.2%	1
MIAMI	1579	3626	0.9%	0.0%	2.2%	0
MILAN	1341	4317	0.6%	0.0%	1.6%	2
MORGANTOWN	796	1286	4.7%	1.6%	0.3%	8
OAKDALE	1243	1542	3.5%	1.6%	0.8%	2
OAKDALE	1025	904	4.1%	1.3%	0.2%	0
OKLAHOMA CITY	1180	1094	0.8%	1.5%	0.1%	8
OXFORD	1221	1461	8.4%	2.1%	0.1%	0
PEKIN	1391	1833	5.7%	0.5%	0.2%	1
PETERSBURG	1324	2007	0.5%	0.5%	0.2%	3
PHOENIX	1419	1022	2.9%	1.0%	0.5%	2
RAY BROOK	1046	1529	6.1%	0.7%	1.0%	0
ROCHESTER	831	1516	1.9%	2.2%	0.5%	9
SANDSTONE	805	820	10.2%	0.6%	0.3%	0
SCHUYLKILL	1320	2552	0.7%	0.2%	NA	3
SEATAC	630	345	28.0%	20.8%	0.1%	0
SHERIDAN	1661	1593	1.3%	1.7%	0.0%	0
SPRINGFIELD	1156	1061	20.2%	0.5%	0.5%	0
TALLAHASSEE	951	371	18.0%	33.7%	4.3%	5
TERRE HAUTE	1353	2186	1.6%	0.9%	0.5%	0
TEXARKANA	1547	1776	1.2%	0.3%	0.1%	10
WASECA	558	628	2.2%	1.3%	0.4%	8
YAZOO CITY	1586	860	5.3%	0.6%	0.8%	2
AVERAGE	1282	1872	2.9%	0.7%	1.0%	4
Numbers based on information reported by institutions for survey period of March 11 and 21, and April 6, 1998.						

Table 2

**Federal Prosecutions of Cases Involving Inmates
Using the Telephone to Facilitate a Crime**

CASE NAME	YEAR	OFFENSE	BOP INITIATED	INSTITUTION OR COMMUNITY CRIME
US v. Danny Alex Macias	1977	Distr. of heroin	unkn	Community
unknown	1978	Drug conspiracy	No	Community
US v. Henry Stull and Daniel Stull	1982	Mail fraud	No	Community
US v. Leon McAnderson	1986	Consp. to commit terrorist acts	No	Community
US v. Brooks, et al	1986	Tax fraud	No	Community
US v. Rounsavall	1989	Consp. to distr. Meth.	No	Community
US v. James Marcel Ryan	1990	Witness tampering, firearms	No	Community
US v. Maria De La Luz Maggi	1991	CCE; drugs	No	Community
US v. Chong Tai	1991	Extortion	unkn	Community
US v. Terry Kelton, et al	1991	Consp. distr. drugs	No	Community
US v. Philip Goldberg	1992	Unauthor. use of access device	No	Community
US v. Henslee, et al	1992	Meth. conspiracy	No	Community
US v. James Rogers	1992	Obstruction of justice; attempt to kill witness	No	Community
US v. Robert Montano, et al	1993	Firearms	No	Community
US v. Robert Oakley, et al	1993	Drug introduction	Yes	Institution
US v. Michael Barnes	1993	Drug conspiracy	No	Community
US v. Alexander Mihaly	1994	Wire fraud, money laundering	No	Community
US v. George Davis et al	1994	Consp. manufacture Meth.	No	Community
US v. Joni Barriga and Michael Wilson	1994	Drug introduction	Yes	Institution
US v. McLemore	1994	Consp. import heroin	No	Community
US v. Robert McNeese, et al	1994	Consp import heroin	No	Community
US v. Russell Williams	1994	Drug introduction	No	Institution
unknown	1995	Money laundering	unkn	Community
US v. Alphonse Persico, et al	1995	Racketeering	unkn	Community
US v. Iacobacci, et al	1995	Bank fraud	No	Community
US v. Jesus Ruiz, et al	1995	Drug conspiracy	No	Community
US v. Larry Dusenberry, et al	1995	Drug conspiracy	No	Community
US v. Lentnell Rosemond	1995	Consp. bank robbery	No	Community
US v. Lister	1995	Tampering, attempt to kill	No	Community
US v. Yong Bing Gong	1995	Import heroin	No	Community
US v. Rodney Archambeault	1996	Mail fraud	No	Community
US v. Ronald Goldberg	1996	Obstruction of Justice	unkn	Community
US v. Derrick Johnson, Theodore Brown, Janice Boyd	unkn	Wire fraud	Yes	Community
unknown	unkn	Threatening communications	Yes	Community
unknown	unkn	Extortion	unkn	Community
unknown	unkn	Tax fraud	unkn	Community
US v. Brian Lester	unkn	Bookmaking	No	Institution
US v. Digiorno	unkn	Scam on prisoners	Yes	Institution
US v. Ernest Hill	unkn	Bank fraud	No	Community

Source: United States Attorney's Offices, 1995 survey conducted by D.C. USAO.

Table 3

Federal Prosecutions of Cases Involving Inmates Using the Telephone to Facilitate a Crime

CASE NAME	YEAR (a)	OFFENSE	INMATE USE OF TELEPHONE	BOP INITIATED (b)
US v. Steven Girard Szili, et al	1985	Conspiracy to distr marijuana, operating a continuing criminal enterprise	While serving a federal drug sentence, D directed drug business via phone calls to suppliers and his brother on outside.	No
US v. Daulys Enrique Chico-Polo	1986	Conspiracy to distribute cocaine	Inmate used phones and visits to arrange delivery of cocaine and direct distribution of the proceeds	No
US v. Jesus Carrasco Santoy	1986	Drug conspiracy, CCE, various drug offenses.	Santoy, after released from Leavenworth, obtained Mexican heroine through convicted trafficker Jesus Valenzuela-Verdugo, who was making delivery arrangements to Santoy from Leavenworth via telephone, per pen registers.	No
US v. James O'Connor	1987	Obstruction of Justice, subornation of Grand Jury perjury	D, on outside, received collect calls from witness in prison whom D induced to commit perjury about D's arsons	No
US v. Terri Coyle	1988	Contraband in prison	Inmate used telephone to communicate with co-consp re arranging introduction of drugs into the institution.	Yes
US v. Thomas Lee Rush	1989	Retaliation on judge and witness, firearms violations	D used phones in attempt to hire murder of two witnesses and judge, and to arrange illegal firearms for payment.	No
US v. Feiner	1989	Bank fraud	Already convicted of bank fraud, D used his corporate secretary to forward calls for hours each day, to conduct a bank fraud scheme of buying and selling airplanes.	No
US v. Jeff Fort	1989	Distribution of drugs and weapons	Fort and others used telephones to facilitate distribution of drugs and weapons. Gang members used coded language, eventually cracked with aid of cooperating gang members. Prosecution led in part to prosecution of El Rukn gang in NDIL	Unknown
US v. Mahmood Ul Hassan	1990	Conspiracy to possess and distribute heroine	Directed from inside Terre Haute the importation of heroine from Pakistan into New York.	Unknown
US v. Liberatore	1990	RICO, racketeering, conspiracy	D is capo in Cleveland La Cosa Nostra used visiting room phone to assist establish and run a drug money laundering operation. Also used phone to pressure Unions and make loans to "connected" union contractors.	No
US v. Michael Barnes	1991	Conspiracy to possess and distribute heroine	Used telephones in USP Terre Haute to direct wife and others in the distribution of heroine in Baltimore, MD and into USP Terre Haute.	Unknown
US v. Rafael Santana, et al	1991	Conspiracy to import, possession with intent to distr, heroine	Inmate used telephone to negotiate with his co-conspirators on the outside, his end of a 141 kilo heroine deal.	No
US v. Dusenbery	1991	Taft Hartley Act, drug money laundering	Coordinated multi k cocaine distribution ring and money laundering.	No
US v. Lavell Johnson, Raymond Midlano, et al	1991	Drug charges	Two inmates approached CO to bring in contraband, and used phone to arrange delivery by one of D's sister of marijuana and heroine into the institution.	Yes
US v. Marvin Mitchell	1991	Wire fraud	D bilks trucking companies out of funds (approx \$100,000) available to truckers on the road, using three-way calling, and outside contacts to cash the checks.	No
US v. Kenneth Noel	1991	Contraband in prison	Inmate used telephone to communicate with co-consp re arranging introduction of drugs into the institution.	Yes
US v. Michael Bruce Marks	1992	Wire fraud (8 counts)	D, while incarcerated, set up and directed the operation of a fraudulent employment matching service of overseas jobs, \$1M+.	No
US v. Thomas Summerville & Ralph Sharp	1992	Wire fraud	D got names of recently deceased men from newspapers, use phone to call wives and claim that he was a friend of deceased. Wives would send money to Western Union, where D's accomplice picked it up.	Yes
US v. Brian Lester	1992	Racketeering	D used phone to operate bookmaking activity.	No
US v. Russell Bradely Marks	1992	Tampering with witness	D used phones to solicit the murder of a federal witness	No
US v. Phillip R. Goldberg	1992	Wire fraud	D met women by phone, caused 1 woman's long distance carrier to be changed, then used that carrier and number, without authorization.	No
US v. Julio Cesar Ramos-Oseguera, et al	1993	Recordings of calls used to prove consciousness of guilt of other charges.	Used telephone calls to family members to identify, intimidate and threat informants.	No
US v. Arthur Acosta	1993	Possessing, and attempting to pass, counterfeit currency, aiding and abetting	After trial, before incarceration, D gave person a package of nearly \$100,000 of counterfeit cash, and from inside, instructed by phone and visits, how to sell the counterfeit cash.	No

Table 3

Federal Prosecutions of Cases Involving Inmates Using the Telephone to Facilitate a Crime

2

CASE NAME	YEAR (a)	OFFENSE	INMATE USE OF TELEPHONE	BOP INITIATED (b)
US v. Russell Terry Williams, et al	1993	Drug charges	Inmates used phones to orchestrate heroine deals, speaking Spanish.	No
US v. Joseph A. Demonte	1993	Conspiracy, wire fraud, aiding and abetting	Inmate defrauded females through "lonely hearts" ads, initial contact through mail then phones, and claimed to be white collar criminal with much money on outside that he needed the females to help him access.	No
US v. Laughing	1993	Smuggling	Used phones to set up with Tribal Government officials, smuggling cigarettes and alcohol to Canada	No
US v. Alfred Maisonet, et al	1993	Heroin Cocaine Distribution	Convicted drug dealer, for murder of witness, continued to direct Maisonet in narcotics transactions	Unknown
US v. Salameh	1993	Explosives	Phones were used to assist in planning construction of explosive device.	No
US v. Heriberto Huerta	1993	RICO, COE, drug offenses (including use of a telephone facility) firearms offenses, commission of violent crimes in aid of racketeering.	Huerta was President of the San Antonio Division of the Mexican Mafia. Directed gang members on outside in drug trafficking, assault/murder, extortion, and smuggling drugs into Lompoc.	No
US v. McLenore	1994	Drug conspiracy	Used telephone calls to a girlfriend to direct drug trafficking trips and recruit couriers.	No
US v. Rivera, et al	1994	RICO, RICO conspiracy, VCAR, narcotics trafficking	Used phones to direct and receive profits from outside drug gang.	No
US v. Stephen Cavano, et al	1994	RICO conspiracy, use of interstate facilities in commission of murder for hire	D used the phones in MCC Miami to communicate with co-conspirators in order to locate and id potential govt. witnesses in the crime pending against them. D conspired to murder the govt. witnesses.	No
US v. Antonio Rosada	1994	Consp to distri cocaine, smuggle into fed fac, use of comm device, assault on federal officer.	Drug introduction scheme, whereby inmate arranged deals over phone for other inmates to pay his courier, who would bring drugs into visiting room.	No
US v. Nelson Luis Millet, et al (Latin Kings)	1994	Racketeering, violent crimes in aid of racketeering, witness intimidation, drug trafficking	Inmate, Supreme Commander of a branch of the Latin Kings, used telephones to run racketeering enterprise, including to select officers, collect intelligence, give orders re: drug block protection and punishing snitches.	No
US v. Reggie Green	1994	Bank fraud	D used the telephone to direct people on how to advance his bank fraud scheme.	No
US v. Michael Wilson & Joni Bariga	1995	Conspiracy to possess narcotics with intent to distribute	Talked girlfriend into bringing drugs into the institution.	Yes
US v. (Names protected)	1995	Consp. to possess with intent to distribute, dist. of large quantities of cocaine and meth, and use of telephone to commit a drug felony.	Used telephone to relay in coded language his plan to resume trafficking and to check on the status of drug deliveries. Primary communication through family contact visits.	No
US v. Gerald Francis Chilli, et al	1995	RICO conspiracy to commit counterfeit credit card fraud	Imprisoned pre-trial, organized crime member inmate maintained contact with co-conspirator on outside in scheme to re-encode magnetic strips on counterfeit credit cards. Did not openly discuss scheme on phone, but conversations used to establish connection.	No
US v. Akiyoshi Yamada	1995	Medicare fraud of \$30 million	Inmate managed, directed, and supervised a scheme to continue to mail false claims for reimbursement to Medicare, using intimidation inside the prison to use the phone accounts of other inmates and using call forwarding.	No
US v. Addison, et al	1995	Contaband in prison	Telephone used to arrange providing inmate with drugs.	Unknown
US v. Prince, et al	1995	Contaband in prison	Telephone used to arrange providing inmate with drugs.	Unknown
US v. Burton, et al	1995	Contaband in prison	Telephone used to arrange drug deal.	Unknown
US v. Terry Williams	1995	Contaband in prison	Telephone used to arrange providing inmate with drugs.	Unknown
US v. Willis Williams	1995	Contaband in prison	Telephone used to arrange providing inmate with drugs.	Unknown
US v. Dennis McMullen	1995	Tampering with witness	D used phones to solicit the murder of a federal witness	No
US v. Smith	1995	Mail fraud, conspiracy	D, while incarcerated, read newspaper to identify persons recently arrested, then called and directed his co-conspirator to call the person and offer to fix the charges for a fee.	No
US v. Yong Bin Gong, et al	1995	Conspiracy to distribute heroine	Gong managed his drug distribution network in detail on a daily basis	Unknown
US v. Palazollo	1995	Loan sharking, tax offenses	Inmate used telephone to communicate with co-consp re collecting outstanding loansharking debts	No
US v. Eugene Smith	1995	Money laundering	D used phone to direct drug conspiracy	No
US v. Paul Ahrens	1995	Contraband in prison	Inmate used telephone to communicate with co-consp re arranging introduction of drugs into the institution.	Yes

Table 3

Federal Prosecutions of Cases Involving Inmates Using the Telephone to Facilitate a Crime

CASE NAME	YEAR (a)	OFFENSE	INMATE USE OF TELEPHONE	BOP INITIATED (b)
US v. Ray Colon	1995	Contraband in prison	Inmate used telephone to communicate with co-consp re arranging introduction of drugs into the institution.	Yes
US v. Barry Keeler	1995	Contraband in prison	Inmate used telephone to communicate with co-consp re arranging introduction of drugs into the institution.	Yes
US v. Darres Park	1995	Contraband in prison	Inmate used telephone to communicate with co-consp re arranging introduction of drugs into the institution.	Yes
US v. Tony Hill	1996	Drug offenses	D made calls to girlfriend in Florida to arrange purchase and delivery through two "mules" to D in institution. BOP prevented the delivery and mule later murdered D's girlfriend for non-payment.	Yes
US v. David Robert Kennedy	1996	Obstruction of justice, enhancement on underlying drugs and firearms charges.	Following hung jury and partial conviction, inmate phoned witnesses to arrange for them to provide perjured testimony in the second trial.	No
US v. Darryl Henly, et al	1996	Drug charges	D used phones to communicate to co-conspirators a multi k cocaine deal. Also used a cellular phone, provided by correctional officer, to orchestrate a murder for hire of the judge in his pending case.	No
US v. Harold Goldstein	1996	Mail fraud (8 counts)	D used hundreds of phone calls to orchestrate a scheme to defraud investors by marketing bogus certificates of deposit.	No
US v. Saul Pedraza	1996	Conspiracy, attempted possession of a prohibited object in prison	D placed calls from the MDC, providing instructions on smuggling heroine into institution.	Yes
US v. Sisti	1996	Concealment of assets	Used phones in conspiracy to hide assets from bankruptcy trustee.	No
US v. Robert Morgan	1996	Obstruction of justice enhancement on underlying drugs and firearms charges.	Inmate used phone to arrange with his mother to procure someone to commit the murder of the girlfriend of one of the witnesses in his case.	No
US v. Robert G. Flierer	1996	Conspiracy to obstruct justice, tax fraud, money laundering	Inmate and co-conspirator spoke with numerous inmates on telephone concerning purchasing Rule 35's.	No
US v. Donald Lee Crosswhite	1996	Wire fraud and credit card fraud	Inmate used stolen SSN's to establish fraudulent telephone service, sold phone service to inmates, used stolen credit card numbers to order consumer goods.	Yes
US v. Habib Reza Jamshidi	1996	Stolen US mail	After stealing mail, inmate used phone to apply for credit cards.	No
US v. Jaime Rosada Rosario, et al	1996	Tampering with witness, conspiracy	Inmate received details by phone of the killing of the govt witness he and others had conspired to have killed to prevent testifying at the narcotics trafficking trial	No
US v. Hamid Reza Sayadi-Takhtehkar, et al	1996	Consp to poss and distr heroine, intimidation of witness, aiding and abetting	Inmate used prison phone to dispatch threats to CI and family in Vienna, Austria	No
US v. John Fornarelli	1996	Contraband in prison	Inmate used telephone to communicate with co-consp re arranging introduction of drugs into the institution.	Yes
US v. Thomas Fornarelli	1996	Contraband in prison	Inmate used telephone to communicate with co-consp re arranging introduction of drugs into the institution.	Yes
US v. Charles James	1996	Contraband in prison	Inmate used telephone to communicate with co-consp re arranging introduction of drugs into the institution.	Yes
US v. John Zambrana	1996	Contraband in prison	Inmate used telephone to communicate with co-consp re arranging introduction of drugs into the institution.	Yes
US v. Tina Zambrana	1996	Contraband in prison	Inmate used telephone to communicate with co-consp re arranging introduction of drugs into the institution.	Yes
US v. Pamela Cain & Kiba Greenwood	1997	Conspiracy to possess with intent to distribute narcotics	Talked girlfriend into bringing drugs into the institution.	Yes
OCDETf	1997	Numerous charges	D and CI used phones to set up meetings at facility and at airport on the day D released to a half-way house, leading to several heroin and cocaine deals.	No
US v. Lawrence Sangaree	1997	Money laundering, conspiracy	D used phones to continue money laundering after incarcerated, but before he pleaded, on unrelated charges.	No
US v. Leetavious Gaines	1997	No additional charges for obstruction of justice using telephone.	D used the telephones to contact witnesses in his trial for multiple armed robberies, instructed witnesses to say they know anything and give false story as to why his fingerprints were at one crime scene.	No

Table 3

Federal Prosecutions of Cases Involving Inmates Using the Telephone to Facilitate a Crime

CASE NAME	YEAR (a)	OFFENSE	INMATE USE OF TELEPHONE	BOP INITIATED (b)
US v. Hamdoun, et al	1997	Attempt to distribute added to charge of conspiracy to distribute marijuana	Inmate negotiated drug deal with another inmate (C1) for purchase of an additional 1 ton of marijuana.	NA
US v. Carter, et al	1997	Contaband in prison	Telephone used in drug deal involving correctional officer.	Unknown
US v. Robinson et al	1997	Contaband in prison	Telephone used to arrange providing inmate with drugs.	Unknown
US v. William Glassburn	1997	Obstruction of justice	D used phones to attempt to tamper with witnesses in the underlying prosecution.	No
US v. Ronald Mancil	1997	Conspiracy, wire fraud bank fraud	Used phones and mail to disseminate fraudulent credit cards and merchandise.	Yes
US v. Charles Edward Gammon	1997	Possessing contraband in prison	Inmate used phones to make arrangements for delivery of marijuana into prison in package labeled "legal mail".	Yes
US v. Anthony Jones	1997	Murder in aid of racketeering	Inmate, serving short sentence on firearms offenses, directed by telephone his violent drug organization's response to an ongoing federal investigation of the organization. When he learned that his foster brother testified against the org. Jones ordered, using a coded language on the telephone his lieutenant to have him executed. The man was killed by contract killers at the behest of the lieutenant.	No
US v. Garba	1997	Drug charges	Defendant used the telephone to arrange for pick-up by his brother of the drugs he had swallowed when arrested and was trying to smuggle out of the facility.	No
US v. Knapik	1997	Extortion	Inmate was convicted of loansharking, and continued to direct his operation using the telephones, which led to the arrest of his associate.	No
US v. Leslie Evans, et al	1997	Conspiracy to defraud using access device	D set up fraudulent phone lines in outside d's home ran up phone bills from inside	No
US v. Michael Paul Schaeffer	1997	Mail/wire fraud	Used phones to speak with family members of the victims and with the victims personally after they were released from the Yankton facility.	Yes
US v. Ray E. Black and Roderick D. Robinson	1997	Escape	D's used prison phones to arrange meetings with their girlfriends, who they met at a local hotel after escaping the facility.	Yes
US v. James Butler, et al	1997	Delivery of controlled substance, possession with intent to distribute, possession of a prohibited object by an inmate.	Used telephone for arranging similar drug introductions	Yes
US v. Antonio Monroy	1998	Cocaine possession and conspiracy	Recently arrested inmate and D discussed on telephone a false story to explain to authorities how inmate's fingerprints were on the evidence.	No
US v. Claude Louis Duboc and Penelope Shelfer	1998	Consp to obstruct justice, consp to commit money laundering, money laundering (5 counts)	D used phones to coordinate with his attorney to recruit money launderer to launder overseas money to be used to bribe his sentencing judge.	No
US v. Ricky Brownlee	1998	Money laundering	Inmate using phones to launder \$175,000 to pay his atty fees, using other inmates' phone accounts and call forwarding.	No
US v. Larry Peterson, Richard Atkins, et al	1998	Conspiracy to possess, intent to distr, possession of contraband in prison	Telephone conversation between D's arranging heroine deal on the inside.	Yes
US v. Joshua Edmonds	1998	Drug charges	Inmate using telephones to arrange with family and friends to bring small amounts of drugs into the institution.	Yes
US v. Frederick Heywood	1998	Drug charges	Inmate using telephones to arrange with family and friends to bring small amounts of drugs into the institution.	Yes
US v. Crescioni	1998	Drug charges	D used the telephone to arrange a drug delivery to a tree outside the institution, to be picked up by the D while working as a member of the grounds crew.	Yes
US v. Frechette	1998	Cocaine trafficking	D used phones to set up drug deals on outside for his son.	No
US v. Dexter Isaac	1998	Obstruction of Justice	Arrested for murder, Isaac immediately began using phone to intimidate witnesses and destroy evidence	No
US v. Gurmeet Singh Dhinsa	1998	Obstruction of justice	Inmate contacted via telephone his employees/witnesses, using coded language	No
US v. Tim Roach	1997	Drug introduction	Inmate used phone to arrange from drug introduction.	Yes

