

USDOJ/OIG Special Report



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

**(August, 1999)**

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**TABLE OF CONTENTS**

**[EXECUTIVE SUMMARY](#)**

**[CHAPTER ONE: INTRODUCTION](#)**

- I. [Overview](#)
2. [The OIG Review](#)
3. [Organization of Report](#)

**[CHAPTER TWO: FEDERAL INMATE ACCESS TO TELEPHONES](#)**

- I. [Background on the BOP](#)
2. [Background on Inmate Telephone Use in the BOP](#)
  - A. [The BOP Philosophy on Inmate Use of Telephones](#)
  2. [History of Inmate Access to Telephones](#)

3. [Inmate Telephone Abuse and the BOP 's Early Responses](#)
4. [The Development of the Inmate Telephone System](#)
  1. [Features and Installation of the System](#)
  2. [Washington v. Reno](#)
  3. [Current Telephone Systems in BOP Facilities](#)
  4. [ITS II](#)
  5. [Inmate Telephone Use in State Prisons](#)

### [CHAPTER THREE: LEGAL AND REGULATORY BACKGROUND](#)

1. [BOP Policy and Practice](#)
2. [Prohibited Acts](#)
3. [SIS Role](#)

### [CHAPTER FOUR: OIG REVIEW OF INMATE TELEPHONE ABUSE](#)

1. [Determining the Scope of Inmate Telephone Abuse](#)
2. [OIG Data Collection](#)
3. [OIG Field Visits and Survey of ITS Institutions](#)
  - A. [Current Calling Patterns](#)
  2. [Current BOP Monitoring Efforts](#)
  3. [The SIS Office](#)
  4. [Disciplinary Sanctions for Telephone Abuse](#)
4. [FBI Information](#)
  - A. [Williamsport, Pennsylvania FBI Office](#)
  2. [Survey of FBI Field Offices](#)
5. [DEA Information](#)
6. [Surveys of U.S. Attorneys' Offices](#)
  - A. [1995 USAO Survey](#)
  2. [OIG 1998 Survey of USAOs](#)

### [CHAPTER FIVE: OIG CASE STUDIES OF INMATE TELEPHONE ABUSE](#)

1. [Rayful Edmond III and Related Cases](#)
  - A. [Rayful Edmond III](#)
    1. [FBI Opens Investigation of Edmond](#)
    2. [The OIG Interview of Edmond](#)
  2. [Jose Naranjo](#)
  3. [Freddy Aguilera and Nelson Garcia](#)
  4. [OIG Conclusions About Case Studies of Edmond, Naranjo, Aguilera, and Garcia](#)
2. [Anthony Jones](#)
  - A. [Background](#)
  2. [Facts of Jones' case](#)
  3. [OIG's Conclusions regarding BOP's handling of Jones's case](#)
3. [Oreste Abbamonte](#)
4. [OIG Review of Selected Inmate Files](#)

### [CHAPTER SIX: RECENT BOP CORRECTIVE EFFORTS](#)

1. [1996 BOP Working Group](#)

2. [The Director's Letter to Wardens and Executive Staff](#)
3. [Attorney General's Working Group](#)
4. [Wardens' Working Group](#)
  - A. [Working Group Recommendations](#)
    2. [Review by Federal Programs Branch Attorneys](#)
    3. [Review by BOP Office of General Counsel](#)
    4. [Decision on Working Group's Recommendations](#)
5. [BOP's National Strategic Planning Objective 5.11](#)
6. [Congressional Change in Trust Fund Language](#)

## [CHAPTER SEVEN: ANALYSIS](#)

1. [Cap on Inmate Calls](#)
2. [BOP's Failure to Devote Sufficient Resources to the Problem](#)
  - A. [Training](#)
    2. [Insufficient Staffing](#)
3. [Restriction of Telephone Privileges as a Matter of Classification](#)
4. [Increase in Disciplinary Sanctions for Inmate Telephone Abuse](#)
5. [Use of Administrative Punishments](#)
6. [Other Possible Methods of Restricting Privileges](#)
7. [BOP Penological Interests in Providing Telephone Access](#)
8. [BOP's Misplaced Reliance on New Technology](#)
  - A. [Small Improvements with ITS II](#)
    2. [Failure to Coordinate within BOP on the Development and Implementation of ITS II](#)
    3. [New Telephone Technology](#)
      1. [Speaker Identification](#)
      2. [Speech Recognition](#)

## [CHAPTER EIGHT: RECOMMENDATIONS](#)

1. [Monitoring of Inmate Telephone Calls](#)
2. [Discipline](#)
3. [Proactive Restrictions of Privileges](#)
4. [Role of SIS Officer](#)

## [CHAPTER NINE: CONCLUSION](#)

### 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.](#)

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## **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.<sup>54</sup> 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 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.

## 2. **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.<sup>55</sup> 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.

## 3. **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.

## 4. **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 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.

## 2. 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.

### 3. **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).

### 4. **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.<sup>56</sup>

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.<sup>57</sup> The Supreme Court held that such a 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.

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**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.

**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.

**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 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)).

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