

“Your Call May Be Recorded”



GRAND JURY 2018-2019

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SUMMARY

The Orange County Sheriff’s Department contracts with an independent contractor to provide inmate telephone services to the Orange County Jails. The contracted telephone system tracks and records all telephone calls placed by inmates from the jail to an outside party and allows recorded calls to be accessed by a select group of investigators in the Custody Intelligence Unit who monitor and listen to calls as part of their work in controlling crime within and outside the jails. The Inmate Services Division of the Orange County Sheriff’s Department is the local system administrator.

This system has the ability to prevent certain telephone numbers from being accessed or recorded. For example, the system has a “Do Not Record” list that contains the telephone numbers of attorneys and other counselors. The Inmate Services Division manually enters telephone numbers to the Do Not Record list. System software then sorts calls for recording, or not recording, telephone calls based on this list.

In early 2015, the contractor introduced a new software system requiring transfer of all phone numbers on the Do Not Record list from the old to the new system. It appeared at the time that the conversion was successful and everything was in order. However, in June of 2018 a criminal defense attorney discovered that calls from his client to his attorney had been recorded. This led to the discovery that phone numbers on the Do Not Record list at the time of the conversion had not transferred and numerous telephone calls between inmates and their attorneys had been recorded. During evaluation of the problem, it was determined that several of the recorded calls had been accessed and information provided to the Orange County District Attorney.

The Orange County Grand Jury found that Orange County Sheriff’s Department personnel lacked sufficient systems knowledge and training on the inmate phone system and that there was no effective oversight function within the department. These factors contributed to some privileged calls being recorded. To date, the Orange County Grand Jury has found no evidence of improper use of recorded calls.

REASON FOR THE STUDY

It was alleged that the Orange County Sheriff’s Department (OCSD) personnel listened to privileged recordings of phone calls between inmates and their attorneys between January 2015 and June of 2018 and gave those recordings to the Orange County District Attorney’s (DA’s) office for use in prosecuting defendants. It was also alleged that there was a pattern of such behavior by the OCSD and the DA’s office. The Orange County Grand Jury (Grand Jury) selected this topic for further investigation to determine the facts and make findings and recommendations.

METHOD OF STUDY

Members of the Grand Jury toured all Orange County Jails, visiting many of the facilities more than once. The Grand Jury interviewed key personnel of all OCSD units affected by the inmate

telephone system, many several times, and visited the Custody Intelligence Unit (CIU) to observe the process for reviewing phone calls and protocol for admonitions to users of the phones. The Grand Jury listened to a new phone admonition, put in place after the discovery of the conversion failure that requires the receiver of the call to push a button acknowledging the call is being recorded. The investigation included reviewing over 1,000 pages of court documents, attending several court proceedings and reviewing subpoenaed documents. The Grand Jury interviewed key personnel from the OCSD, Public Defender’s Office, DA’s Office, private defense counsel, Office of Independent Review and the phone system contractor. The contract between the County and the contractor was also reviewed. Finally, the Grand Jury conducted an extensive review of items of correspondence, legal records and pertinent news articles. (See Appendix A.)

BACKGROUND AND FACTS

In the law of the United States, Attorney-Client privilege is a client’s right to refuse to disclose and to prevent any other person from disclosing confidential communications between the client and his attorney.¹ Attorney-Client privilege is one of the oldest recognized privileges for confidential communications.² The United States Supreme Court has stated that by assuring confidentiality the privilege encourages clients to make “full and frank” disclosures to their attorneys who are then better able to provide candid advice and effective representation.³ The OCSD has the obligation to protect these legal rights for inmates in its jail system.

Inmate telephone services in the Orange County Jail system are provided at all jail locations. Inmate phones can be used only for outgoing calls; no incoming calls are supported. Each inmate housing unit has phones available for use during set hours and signs on the wall next to the phones state “Your Call May Be Recorded”. (See Appendix B and C.) All calls are recorded unless they are *privileged* calls, such as those between an inmate and his attorney. To ensure the attorney-client privilege, the attorney’s phone number is placed on a Do Not Record (DNR) list. To have a number entered on the DNR list, the attorney must make a request to the OCSD, either through the OCSD website or in person. Recorded calls that are not on a DNR list can be accessed (listened to or downloaded) by OCSD investigators.

Inmate Services Division (ISD), a division of Custody Operations Command of the OCSD, is responsible for the day to day management of the inmate phone system. In addition to the inmate phone system, this division manages all other services to inmates, such as meals and commissary as well as educational, vocational, religious, recreational and re-entry transitional programs. Within the division there is one individual who performs a number of duties including entering phone numbers to the DNR list as requests are received. (See Appendix F.)

¹ See “Attorney-Client privilege”, Black’s Law Dictionary, Pg.1391 (10th ed. 2014)

² Swindler & Berlin v. United States, 524 U.S. 399, 403 (1998)

³ Upjohn Co. v. United States, 449 U.S. 383, 389 (1981)

Over 15 years ago, the OCSD selected the current contractor to provide inmate phone services to the Orange County jail system, including hardware, software, rewiring and technological upgrades. This contractor provides inmate phone services to a number of jail systems in the United States and is recognized as one of the two largest providers of these systems in the nation. Feedback from ISD administrative staff indicated that they had a good working relationship with the contractor who was seen as responsive and reliable. The contractor provided one onsite person to respond only to hardware issues.

In 2014, the contractor upgraded its software and in January 2015 the contractor completed a system conversion for the OCSD. The new system was more user friendly and gave access to more information than the one being replaced. There were no complaints or questions after the conversion was completed and all parties assumed the system worked properly. After the transition the contractor provided webinars on two different days in February 2015 for OCSD users of the system and, on one day in April 2015, provided a webinar for senior administrators. OCSD did not provide, or require the contractor to provide any additional training.

In late 2015, while testifying under oath, in court, a Deputy District Attorney stated that a Sheriff’s Investigator had written a report about privileged phone calls between an inmate and his attorney being recorded, however, no action was taken.

In June 2018, a defense attorney in the *Waring Case*⁴ discovered his client’s privileged phone conversations had been recorded. The matter was brought to the attention of the OCSD and, after review, it was discovered the attorney’s phone number was not on the DNR list. Further research discovered that 1,309 phone numbers had not been transferred to the new DNR list during the system upgrade in 2015. The OCSD requested that the contractor research the issue and provide an explanation. The contractor’s investigation concluded that the cause of the failure had been human error in that the individual responsible for the transfer had failed to properly load the privileged phone numbers onto the DNR list on the new system. The contractor reported these findings to the OCSD.

Prior to the January 2015 conversion the software system had maintained two privileged lists: a “private” list with 42 phone numbers and a DNR list with 1,309 numbers. (The reason for two separate lists on the old software is unknown but both held privileged phone numbers.) The upgraded software system combined these into one list of privileged DNR numbers. The “private” list of 42 numbers had been correctly transferred in 2015 but the DNR list of 1,309 numbers had not been transferred. (See Appendix G and H.) The OCSD discovered that a similar occurrence had happened with the same contractor in Florida in July of 2015, but this was not discovered by the OCSD until after the OCSD learned that 1,309 numbers on the old DNR list were not transferred onto the new list. A recheck by the contractor of all its conversions nationwide found several other instances of incomplete transfer, all tracking, according to the contractor, to the same employee.

⁴ People v. Joshua Michael Phillip Waring, Case #17WF2266 (Orange County Superior Court)

There were many inmate calls to the 1,309 numbers which should have been on the DNR list between January 2015 and July 2018. Not all the calls were completed calls (no answer/no connection) and some numbers had multiple calls. After discovering this situation, the contractor blocked access to all of the numbers in question and the numbers were placed on the DNR list by the OCSD.

Once the OCSD was aware of the issue, they took the following actions:

- Placed phone numbers missing from the DNR list back onto the DNR list.
- Made phone calls to the OC Bar Association and the OC Criminal Defense Bar Association and to each of their Directors, to explain the situation and make sure attorneys understood how to place their phone numbers on the DNR list.
- Telephoned the IT Director of the Public Defender’s office to make sure that office understood the process for their attorneys to be placed on the DNR list. Subsequently, the Sheriff received a list of phone numbers from the Public Defender’s office and reconciled those numbers with the DNR list.
- Checked all jail phones for proper signage and, where needed, updated the signs.
- Updated custody policy manuals for inmate phone rules.
- Formed an action team with representatives from all affected departments including the OCSD, County Counsel, ISD and the District Attorney to address the issue. This action team still meets on an ongoing basis.
- Changed the admonition heard by users of the phone system to leave no doubt that the call is being recorded and to direct attorneys to the link on the OCSD website to add their phone number to the DNR list. The new admonition requires users of the phone system to acknowledge the admonishment by pressing a number on the phone. (See Appendix E.)
- Put in place verification systems to ensure that all numbers on the DNR list are accurate.
- Briefed jail staff about the rules associated with DNR calls and ensured that only authorized staff have access to the inmate phone recording system.

In addition, the District Attorney provided written instructions to his staff on the procedure to follow if they discover a recorded phone conversation they are not authorized to possess.

The CIU is the unit authorized to access the inmate phone recording system. This unit is responsible for intelligence and investigation of crimes in the jail system. It is made up of 8 to 10 experienced investigators who review inmate phone calls to monitor criminal activity inside and outside of the jail. (A comparable unit in San Diego handles 500 fewer inmates and has a staff of 17.) Its objectives are to provide for the safety and security of inmates and staff as well as to aid other agencies. They rely on assault reports, videos and phone calls in gathering information. They also have computer access to a list of phone calls made by inmates and can listen to inmate telephone calls not on the DNR list.

After the discovery that some privileged phone calls had been accessed, the unit made a number of changes:

- The number of individuals with approval to access calls (listen to and/or download calls onto a CD) was reduced from 90 to 8 to 12, including investigators in the CIU and Inmate Services administration. (See Appendix D)
- If an investigator is reviewing a list of phone calls on his computer screen and sees a small “ear” icon next to a call, he knows that the call is privileged and cannot be accessed.
- If a call without an “ear” icon is accessed and determined to be privileged, the listener must immediately cease listening and check the phone number against three open sources to validate that the number belongs to an attorney. If so, the listener must block the call and notify his superior. The superior, in turn, must notify ISD and have the phone number added to the DNR list. Previously, if a call was determined to be privileged, it was simply blocked by the investigator. (See Appendix I.)
- When another law enforcement agency requests copies of an inmate’s recorded calls, the CIU looks at all calls made by that inmate and eliminates any calls that are privileged. The remaining calls made by that inmate are downloaded to a CD, which must be picked up in person by the requesting agency. The individual who receives the CD must sign a document that instructs him to carefully check the phone calls again to ensure that none of the calls on the CD are privileged.
- All calls downloaded to a CD by OCSD staff are documented.

On August 29, 2018, the Public Defender’s office filed an action with the OC Superior Court titled *People v. John Does 1-58*⁵ to determine the dimensions and impact of the issue. Due to the significance of the issue, the judge appointed two Special Masters⁶ to receive all the phone call data and determine exactly how many and what kind of calls were affected.

There is an exception to the regular inmate phone system for inmates who act as Pro-per⁷. The law allows a judge to grant an inmate’s request to serve as his own attorney; these inmates are referred to as Pro-per and they can represent themselves in court even if they are not attorneys. The judge allots the Pro-per a certain number of hours daily/weekly to make phone calls in preparation for their defense. However, the inmate does not call on the inmate phone system used by other inmates. The Pro-per is taken by a deputy to a separate county phone which is not able to record calls.

In the *Waring Case*⁸, the defendant requested dismissal of the charges against him because he had been a Pro-per during the time his phone calls were recorded. As there are no recordings on

⁵ *People v. John Does 1-58*, Case #M-17638 (Orange County Superior Court); Opening Docket text: Emergency order requesting this court; (1) appoint a special master for unlawfully recorded attorney-client phone calls (2) order OCDA, county counsel, and law enforcement to immediately cease accessing unlawfully recorded phone calls; and (3) order law enforcement to return hard copies of phone calls and destroy other copies

⁶ “A master (sometimes called a Special Master) is a court-appointed official who helps the court carry out a variety of special tasks in a specified case.” (The ‘Lectric Law Library)

⁷ Pro-se or Pro-per is Latin for self or “in one’s own behalf”. Litigants or parties representing themselves in court without the assistance of an attorney are known as pro se litigants. (US District Court, Southern District of New York)

⁸ *People v. Joshua Michael Phillip Waring*, Case #17WF2266 (Orange County Superior Court)

Pro-per phones, the calls were likely made from the inmate phone system. The Court did not approve his request.

During its investigation, the Grand Jury learned:

- CIU investigators had access to an 800 number for support of software or hardware issues. OCSA did not monitor the experience and method of use of this number by different OCSA agencies to ensure that OCSA staff received a consistent level of responsiveness. There did not appear to be sufficient support available within the OCSA.
- In interviewing private defense counsel and public defenders, the Grand Jury discovered that the majority of defense attorneys believed their calls would not be recorded, because they were attorneys, regardless of signage in the jails that clearly stated ‘calls may be recorded’ or admonitions that stated calls may be recorded. The majority were also unaware of the process to have their phone number added to the DNR list. The Grand Jury found that this was a pervasive issue and that the OCSA was not efficient in educating the legal community on the procedures to ensure privileged communications with their clients.
- OCSA administration provides limited system oversight and has access to limited system reports. There are no checks and balances in place to oversee the system and maintenance of the DNR list is limited to adding numbers with no purging of old numbers.
- There are features of the system that can aid management that are not being used. For example, the system has a feature called “Word Search” that gives users the ability to scan all recorded calls for key words. This system feature is not utilized by CIU staff, even though it would significantly increase efficiency for the CIU Investigators.
- The ability to automate features of the system has not been fully utilized. For example, as inmates are released from the jail system, their inmate data is not automatically updated across the system.
- OCSA does not currently require its telephone system contractor to provide onsite user level software support.
- Communication between OCSA units using/accessing the inmate phone system is inefficient. For example, if there is a problem with the system in the CIU, CIU staff makes a call to the contractor’s 800 number but sometimes waits up to several days for resolution. Inmate Services managers state they have resolution to service requests within hours.
- As of the date of this report, the Grand Jury could find no evidence of any adverse effect on any criminal cases because of the access.

Throughout its investigation, the Grand Jury found that all involved parties handled this situation professionally, with transparency and with good intentions. There was no evidence that recorded phone calls were systematically provided to the DA and representatives of the departments involved were forthcoming and responsive. This is a complicated issue and, to the OCSA’s and the County’s credit, they are tackling it head-on and may easily become leaders in the State and

the United States in finding the most desirable solution for providing legally privileged communications to inmates.

FINDINGS

In accordance with California Penal Code Sections §933 and §933.05, the 2018-2019 Grand Jury requires (or, as noted, requests) Responses from each agency affected by the Findings presented in this section. The Responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation titled “Your Call May Be Recorded” the 2018-2019 Grand Jury has arrived at eighteen principal Findings, as follows:

Pre-June 2018:

- F1.** There was minimal *centralized technical oversight* of the inmate phone recording system (the “Recording System”) within the OCSD prior to July 2018.
- F2.** Lack of OCSD verification of the contractor’s transfer of telephone numbers from the old to the new system allowed the contractor’s transfer error to survive.
- F3.** Most of the legal community believed none of their telephone conversations with inmate clients would be recorded.
- F4.** Available features of the contractor’s system were not being utilized by the OCSD to generate all available reports in order to support oversight.
- F5.** OCSD did not require an on-site systems engineer be provided by the contractor to resolve *technical issues* in a timely manner.
- F6.** There was no instruction in either the inmate orientation brochure or the inmate orientation video regarding inmate’s attorney-client privilege rights for telephone calls with their attorney.
- F7.** There was no internal “policy manual” for management of the inmate telephone system.

Post-June 2018:

- F8.** There is currently minimal *centralized technical oversight* of the inmate telephone system within the OCSD.
- F9.** Lack of OCSD verification of the contractor’s transfer of telephone numbers from the old to the new system is resulting in significant costs to the County of Orange.

F10. The OCSD does not provide periodic reminders to outside users (attorneys) of the Recording System regarding the method for placement of phone numbers on the DNR list.

F11. Available features of the current system are not being utilized by the OCSD to generate all available reports in order to support oversight.

F12. OCSD does not currently require its telephone system contractor to provide a systems engineer on site to resolve *technical issues*.

F13. The lack of *centralized technical oversight* of the Recording System by the OCSD has resulted in ineffective communication between the various OCSD units that use the system.

F14. The lack of *centralized technical oversight* of the Recording System by the OCSD causes a delay in resolving issues with the system.

F15. There is no instruction to inmates on either the inmate orientation brochure or the inmate orientation video regarding their attorney-client privilege rights for phone calls with their attorney.

F16. No evidence has been presented to the Grand Jury indicating that any defendant’s rights to a fair and impartial trial have been improperly or adversely affected by the violation of their communication privilege with their legal counsel.

F17. The OCSD and the DA have been responsive and professional in handling the situation once the recorded inmate telephone calls were discovered in June 2018.

F18. As of the writing of this report, there has been no evidence of malicious intent by the OCSD or the DA regarding the use of any privileged telephone communications.

RECOMMENDATIONS

In accordance with California Penal Code Sections §933 and §933.05, the 2018-2019 Grand Jury requires (or, as noted, requests) Responses from each agency affected by the Findings presented in this section. The Responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation titled “Your Call May Be Recorded” the 2018-2019 Grand Jury makes the following nine Recommendations:

R1. By September 30, 2019, the OCSD should create an onsite unit within the Inmate Services Division (OCSD/Inmate Phone System Oversight Management) to provide direct oversight of the inmate phone system. **(F1, F2, F7, F8, F9, F13, F14)**

R2. By October 31, 2019, the OCSD/Inmate Phone System Oversight Management should assign:

A. One or more persons to:

handle all phone number input and deletion actions, produce lists for audit, complete the audits, produce lists for management, manage regular communications to internal and external users and provide periodic in person training to internal users, and

B. One or more:

systems engineers to handle all nonproprietary hardware, software and systems problems independently and other proprietary changes directly with the phone call Recording System contractor. **(F1, F2, F5, F7, F8, F12, F14)**

R3. By September 30, 2019, each OCSD unit that accesses the inmate phone system should designate a coordinator to interface directly with OCSD/Inmate Phone System Oversight Management. **(F13)**

R4. By October 31, 2019, the OCSD/Inmate Phone System Oversight Management should develop a periodic auditing process to maintain current data and delete outdated information. **(F2, F8)**

R5. By September 30, 2019, the OCSD/Inmate Phone System Oversight Management should acquire all available system features required to have complete control of user level software settings and report generation. **(F4, F11)**

R6. By September 30, 2019, the OCSD/Inmate Phone System Oversight Management should develop and implement a method to automate input and deletion of information on lists. **(F1, F2, F8, F14)**

R7. By October 31, 2019 the OCSD should meet directly with the legal community annually to share information on methods for assuring privileged telephone communications and receive input on best practices. **(F3, F10)**

R8. By October 31, 2019 the OCSD should develop a plan for written periodic updates to the legal community on methods for assuring privileged communications (i.e. trade publications, social media, correspondence). **(F3, F10)**

R9. By October 30, 2019 the OCSD should prepare an updated inmate orientation brochure and video that include information on the attorney-client privilege rights during phone calls with their attorney. **(F6, F15)**

RESPONSES

The following excerpts from the California Penal Code provide the requirements for public agencies to respond to the Findings and Recommendations of this Grand Jury report:

§933(c)

“No later than 90 days after the grand jury submits a final report on the operations of any public agency subject to its reviewing authority, the governing body of the public agency shall comment to the presiding judge of the superior court on the Findings and Recommendations pertaining to matters under the control of the governing body and every elected county officer or agency head for which the grand jury has responsibility pursuant to Section 914.1 shall comment within 60 days to the presiding judge of the superior court, with an information copy sent to the board of supervisors, on the Findings and Recommendations pertaining to matters under the control of that county officer or agency head or any agency or agencies which that officer or agency head supervises or controls. In any city and county, the mayor shall also comment on the Findings and Recommendations. All of these comments and reports shall forthwith be submitted to the presiding judge of the superior court who impaneled the grand jury. A copy of all Responses to grand jury reports shall be placed on file with the clerk of the public agency and the office of the county clerk, or the mayor when applicable, and shall remain on file in those offices . . . ”

§933.05

“(a) For purposes of subdivision (b) of Section 933, as to each grand jury finding, the responding person or entity shall indicate one of the following:

(1) The respondent agrees with the finding.

(2) The respondent disagrees wholly or partially with the finding, in which case the Response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.

(b) For purposes of subdivision (b) of Section 933, as to each grand jury recommendation, the responding person or entity shall report one of the following actions:

(1) The recommendation has been implemented, with a summary regarding the implemented action.

(2) The recommendation has not yet been implemented, but will be implemented in the future, with a timeframe for implementation.

(3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report.

(4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.

(c) However, if a finding or recommendation of the grand jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the board of supervisors shall respond if requested by the grand jury, but the response of the board of supervisors shall address only those budgetary or personnel matters over which it has some decision-making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.”

Comments to the presiding Judge of the Superior Court in compliance with Penal Code §933.05 are required from:

Findings:

Orange County Sheriff’s Department **F1, F2, F3, F4, F5, F6, F7, F8, F9, F10, F11, F12, F13, F14, F15, F16, F17, F18**

Orange County Board of Supervisors **F9, F11, F12**

Recommendations:

Orange County Sheriff’s Department **R1, R2, R3, R4, R5, R6, R7, R8, R9**

Orange County Board of Supervisors **R1, R2, R5**

REFERENCES

Acronyms

CIU	Custody Investigations Unit
DA	District Attorney
DNR	Do Not Record
ISD	Inmate Services Division
OCSD	Orange County Sheriff’s Department

Documents

1. Braun, Carrie “Orange County Sheriff’s Department Press Release” 11/09/2018.
2. “Orange County Inmate Orientation DVD” 2011.
3. Inmate Telephone Services Contract with OCSD #MA-060-15010542 signed by contractor 10/9/2014 along with Amendment 1 signed by contractor 9/5/17 and Amendment 2 signed by contractor 11/1/2018.
4. 2016-2017 Orange County Grand Jury Report –“The Myth of the Orange County Jailhouse Informant Program”.
5. Orange County Jail Inmate Orientation Booklet 2018.

Orange County Superior Court Cases

6. People v. John Does 1-58, Case #M-17638 (Orange County Superior Court).
7. People v. Joshua Michael Phillip Waring, Case #17WF2266 (Orange County Superior Court).
8. People v. Justin Weisz, Case #18WF0433, (Orange County Superior Court).

News Articles

9. “OC Sups Keep Jail Phone Provider Who Recorded calls”. 11/5/2018.
<https://patch.com/California/sanjuancapistrano>
10. Saavedra, Tony. “Phone Carrier That Improperly Recorded Orange County Jail Calls did The Same Thing In Florida”.
www.ocreger.com/2018/08/23
11. Gerda, Nick. “Sheriff and DA Officials Knew For 2+ Years About Attorney-Client Recordings” Voice of Orange County. December 3, 2018.
<https://voiceofoc.org/2018/12/sheriff-officials-knew-in-2015-2016-and-2017-about-attorney-client-recordings/>
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13. “Are Telephone Calls Between Attorneys And Inmates Really Privileged?” Santa Clara County Civil Grand Jury Report. 2006-2007.
http://www.scscourt.org/court_divisions/civil/cgi/2007/AttorneyInmatePhonecalls.pdf
14. ‘Technical error’ blamed for recordings of more than 1,000 attorney-inmate phone calls in OC jail.
<https://www.latimes.com/local/lanow/la-me-ln-oc-pivileged-phone-calls-20180817-story.html>
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<https://www.latimes.com/socal/daily-pilot/news/tn-dpt-me-josh-waring-hearing-20190219-story.html>
16. Saavedra, Tony. ‘Judge says recording of attorney-client calls was an ‘epic mishap,’ but won’t release son of ‘OC Housewife’. Mercury News. Southern California News Group. 03/11/2019.
<https://www.mercurynews.com/author/tony-saavedra/>
17. Ferner, Matt. “Confidential Inmate Calls With Lawyers Recorded Illegally In California Jail For Years”. 08/17/2018.
https://www.huffpost.com/entry/california-jail-recording-inmate-calls_n_5b771e73e4b0a5b1febb18eb
18. Harmonson, Todd. “Nearly 34,000 Orange County inmates’ calls to attorneys recorded, not the 1,079 originally reported”. OC Register. 11/9/2018.
<https://www.ocreger.com/2018/11/09/nearly-34000-orange-county-inmates-calls-to-attorneys-recorded-not-the-1079-originally-reported/>

APPENDIX

A: Tours and Interviews

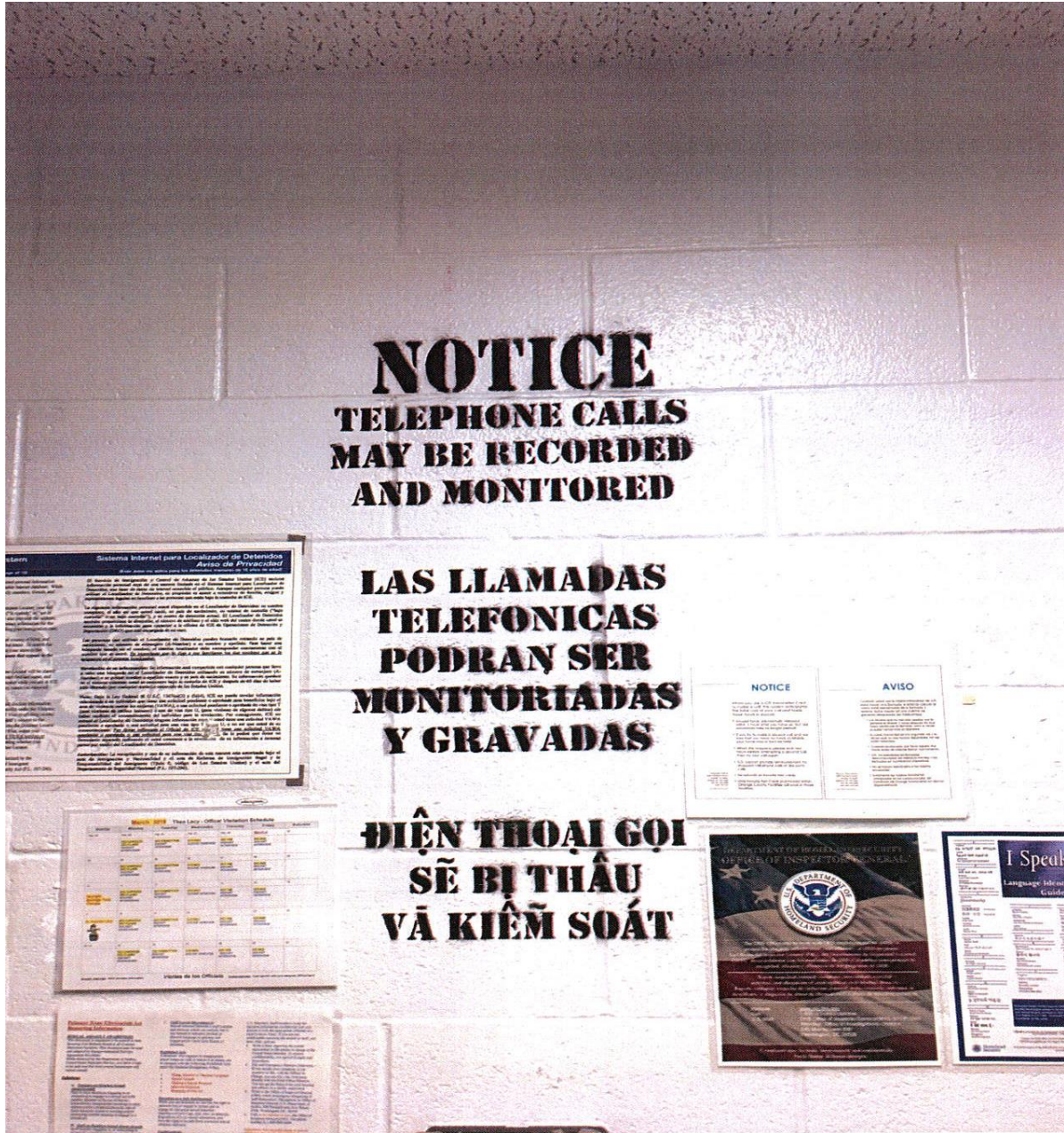
Tours

Orange County: Intake and Release Center at the Central Jail
Men’s Central Jail
Women’s Central Jail
Theo Lacy Facility
James A. Musick Facility
Criminal Intelligence Unit

Interviews

Key Personnel from: Orange County Sheriff’s Department
Public Defender’s Office
Private Defense Counsel
County Counsel
District Attorney
Office of Independent Review
Criminal Intelligence Unit
Contractor Providing Inmate Phone Services

B: Display of Admonishment on the Jail Wall



Provided by Orange County Sheriff's Department

“Your Call May Be Recorded”

C: A Picture of Inmates making calls at the OC jails



Source: Orange County Register, August 29, 2018

D: User Admonishment Document



USER ADMONISHMENT

636 (a) California Penal Code: Every person who, without permission from all parties to the conversation, eavesdrops on or records, by means of an electronic device, a conversation, or any portion thereof, between a person who is in the physical custody of a law enforcement officer or other public officer, or who is on the property of a law enforcement agency or other public agency, and that person's attorney, religious adviser, or licensed physician, is guilty of a felony punishable by imprisonment pursuant to [subdivision \(h\) of Section 1170](#) .

18 United States Code, Section 2511 (1)(a) “Any person who intentionally intercepts, endeavors to intercept or procures any other person to intercept... any wire, oral or electronic communication” shall be fined and/or imprisoned for not more than 5 years. Law enforcement officers recording inmate calls are exempt from Section 2511(1)(a) if they receive the consent of either the sender or receiver of the telephone call prior to the recording and/or the monitoring of the call. (18 U.S.C. 2511(2)(c))

By signing below, you are acknowledging that you are aware of CPC 636(a) and 18 United States Code, Section 2511 (1)(a) pertaining to eavesdropping on or recording(s) a person in custody of a law enforcement agency. This admonishment is also provided to notify you of your responsibility to ensure that the target numbers you provide/search/monitor are not attorney, religious adviser or licensed physician phone numbers. You shall make open source searches of the phone number listed _____ prior to monitoring any call(s).

**In summary it is illegal and against department policy to listen to any inmate phone calls with his/her attorney, religious adviser or licensed physician without permission from all parties to the conversation. If you begin to listen to an inmate phone call and it appears that the phone call is with an attorney, religious adviser or licensed physician, you will immediately cease listening to the call and notify the Inmate Services Division to request the phone number be added to the “Do Not Record” list.*

NAME/PID: _____

ASSIGNED DIVISION/UNIT: _____

DATE/TIME: _____

Provided by Orange County Sheriff's Department

E: Inmate Telephone Prompt

Inmate Telephone – Prompt

For (Language) press (X); - I.e. English press **1**, Spanish press **2** (There are total of 8 language options)

For (Call Type) press (X); - I.e. press **0** for collect, **1** for debit, **2** for net card (**3** Transfer Funds)

Please enter your PIN number now;

Please enter the area code and phone number now;

Please hold;

This telephone call maybe monitored or recorded. The use of special calling features is not permitted during this call, to consent to the monitoring or recording of this call please press **1** after the tone;

Please wait while your call is being connected;

Please hold;

Hello, this is a (Call Type) call from (Inmate Name), an inmate at (Name of OCS D Facility), to accept this call press **0**, to refuse this call hang up or press **1**, to prevent calls from this facility press **9**, for a rate quote press **8**;

This call is being recorded and may be monitored. If you are an attorney and you intend to have legally privileged conversation with this inmate and do not consent to it being recorded, please hang up immediately and go to www.ocsd.org to arrange for private calls with a jail inmate. To accept this call and consent to your conversation being recorded and monitored press **1**;

Thank you for using *the* Link.

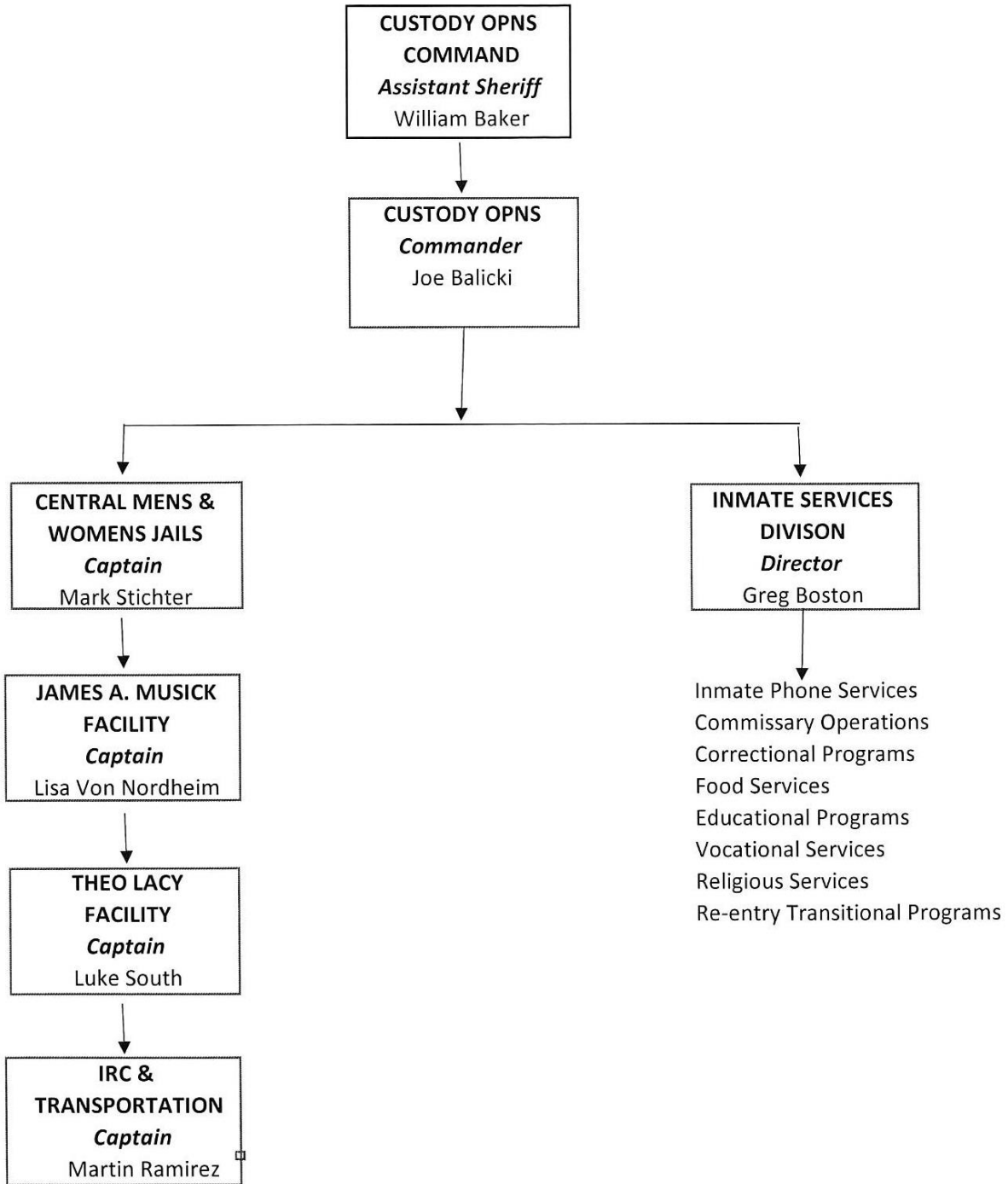
Languages

- English
- Spanish
- Vietnamese
- Cantonese
- Portuguese
- French
- Armenian
- Mandarin

Provided by Orange County Sheriff's Department

F: OCSD Custody Operations Command Organizational Chart

OCSD CUSTODY OPERATIONS COMMAND



Adapted from Orange County Sheriff's Department website

G: Events Timeline 1

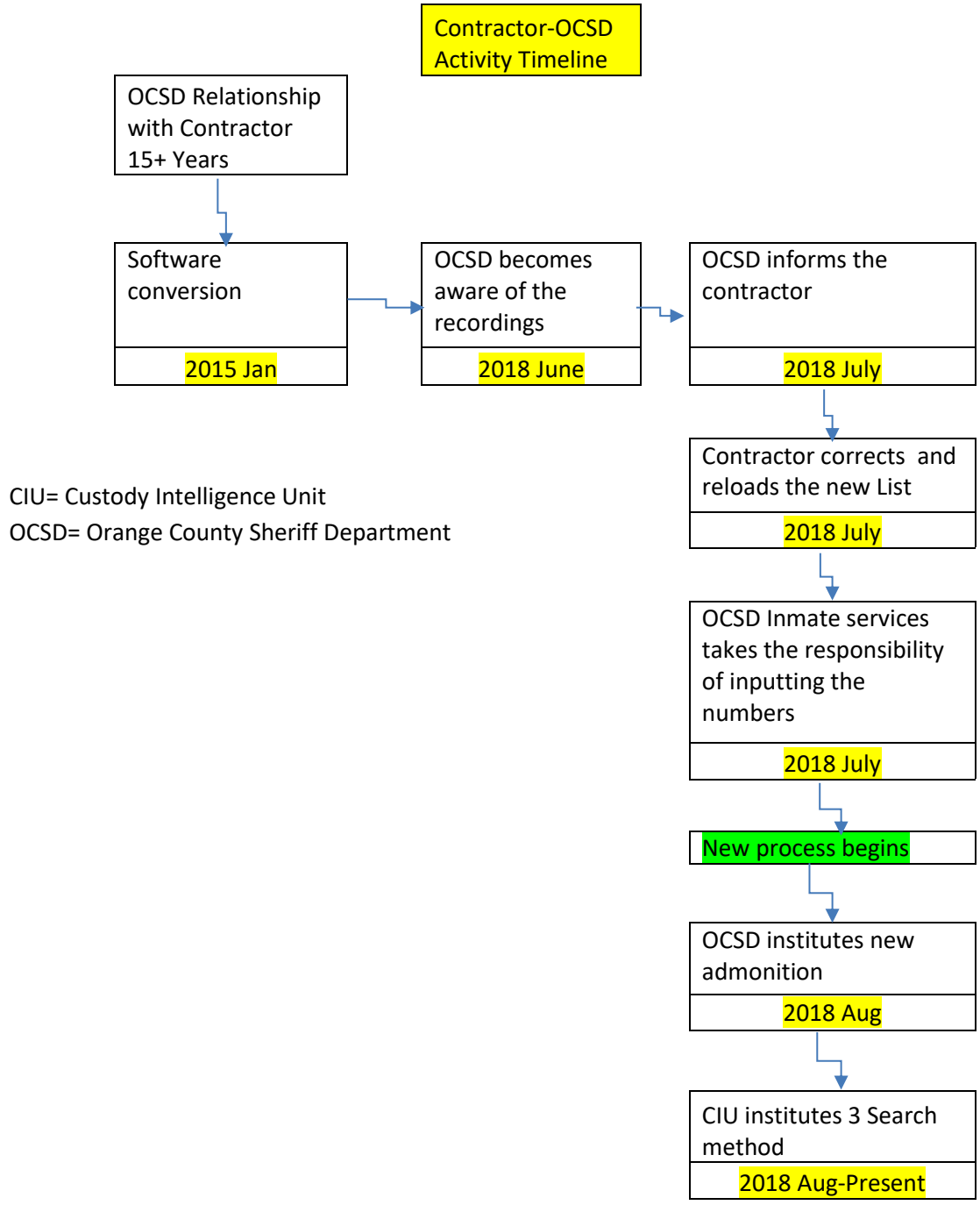
Phone System Lists -Pre Jan 2015				
Private Telephone Numbers N1	Do Not Record Numbers N2	CDR (Call Detail Record) N3	Accessed Numbers N4	Incomplete N5
List of numbers considered private	List of numbers not to be recorded	List and status of all calls made on the system	List of numbers listened to by OCSD	List of incomplete calls

Phone System Lists -Post Jan 2015			
Do Not Record Numbers N1 +N2	CDR (Call Detail Record) N3	Accessed Numbers N4	Incomplete N5
List of numbers not to be recorded	List and status of all calls made on the system	List of numbers listened to by OCSD	List of incomplete calls

Notes: During conversion to the new system N1 was transferred over correctly. N2 was not transferred due to a claimed human error. In the new system, both N1 and N2 are combined as one list. No changes to CDR, accessed or incomplete lists.

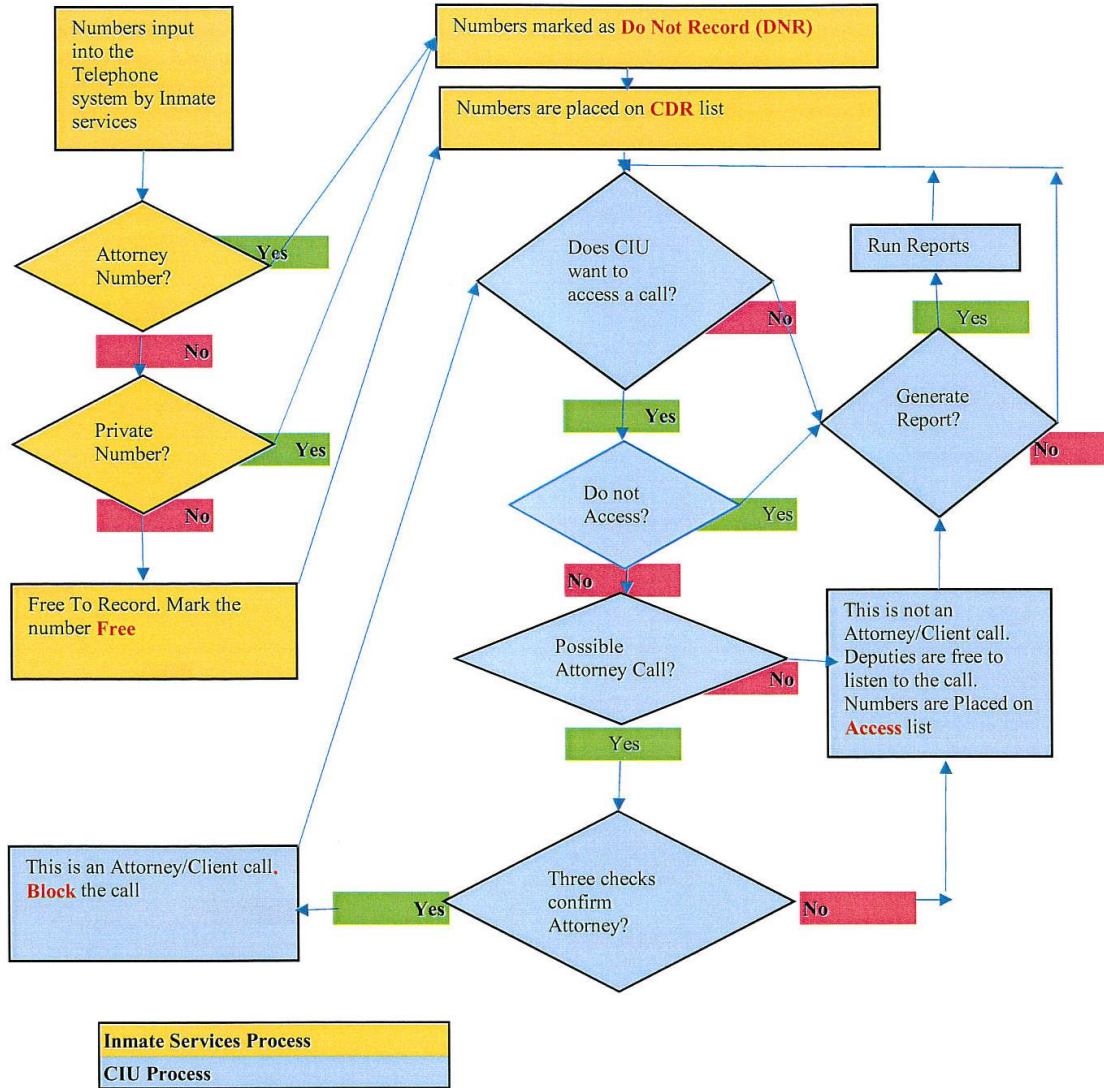
Created from multiple sources by Grand Jury during investigation.

H: Event Time Line 2



Created from multiple sources by Grand Jury during investigation.

I: System Software Flow



Created from multiple sources by Grand Jury during investigation