Law Enforcement Requests for Records and Discovery

June 24, 2011
Federal Bureau of Prisons
Los Angeles Consolidated Legal Center
It is the mission of the Federal Bureau of Prisons to protect society by confining offenders in the controlled environment of prisons and community-based facilities that are safe, humane, cost efficient, and appropriately secure, and that provide work and other self-improvement opportunities to assist offenders in becoming law-abiding citizens.

BOP Mission Statement
- Sentenced, designated inmates - BOP
- All other inmates (i.e., pre-trial inmates) - United States Marshals Service pursuant to 18 U.S.C. § 4086

*Exception:* pre-trial individuals ordered to undergo a mental competency evaluation pursuant to 18 U.S.C. §§ 4241, 4242, 4244 - BOP
18 U.S.C. § 4241- Determination of mental competency to stand trial to undergo postrelease proceedings
18 U.S.C. § 4242- Determination of the existence of insanity at the time of the offense
18 U.S.C. § 4244- Hospitalization of a convicted person suffering from mental disease or defect

- We have go-bys!!! Call us!!!
• Be specific
• Include Inmate Name and Register Number or other Identifying Information
• Effective for all inmate movement
• To make request, contact:
  ○ USMS
Types of BOP documents available:
- Central File or “Skinny File” for pre-trial inmates
- BOP Medical Records
- Disciplinary Records
- SIS Investigation Files
- DHO reports/packets
- Telephone Transaction Data
- Psychology Records
- Movement/Admission & Release History
- Prison Account Records (TRUFACTS)
- Administrative Remedies
- Electronic Messaging (TRULINCS)

Law Enforcement Requests for Records
• Inmates use computers for . . .
  ◦ E-Disco
  ◦ Law Library
  ◦ And More!
E-DISCO
- Reviewing E-discovery from CDs, hard drives
- Fax Discovery Authorization Forms for CDs
- Court appointed Discovery Coordinator
  - Formats hard drives and provides to Education Dep’t
AND MORE!
TRULINC

Trust Fund Limited
Inmate Communication System
Portal Screen

Criminal E-Discovery
**Inmate Computers - the numbers**

<table>
<thead>
<tr>
<th></th>
<th>Units (4)</th>
<th>SHU (4)</th>
<th>Education Dep’t (9)</th>
</tr>
</thead>
<tbody>
<tr>
<td>E-Discovery Computers</td>
<td>1</td>
<td>3</td>
<td>6</td>
</tr>
<tr>
<td>Electronic Law Library</td>
<td>1</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td>TRULINCs</td>
<td>3</td>
<td>1</td>
<td>0</td>
</tr>
</tbody>
</table>

**Criminal E-Discovery**
• More Computers
  ◦ Visiting Room (11)
    • Adobe Read 9, Excel Viewer, Hawk Player, PowerPoint Viewer, Notepad, VLC Player, Windows Media Player, Wordpad, and Word Viewer
  ◦ Requests for Laptops
    • Not contemplated by policy
  ◦ Requests for Access to Internet
    • No.

Criminal E-Discovery
Electronic Messaging is . . .

- Email which requires pre-approval by the public
- Plain text messages only
  - No attachments
  - No special characters
  - No embedded graphics or photos
- A mechanism for family/friends to initiate contact saving staff time
- Easier and faster than US Postal Mail
- A secure method of managing inmate communication
- Access to the most popular form of written communication
- An alternate means of written communication
Electronic Messaging is not . . .

- Internet access
- Instant messaging
- Intended for special or legal correspondence
- A replacement for US Postal Mail
Inmate Agreement for Participation in TRULINCS
Electronic Messaging Program

U.S. DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF PRISONS

Inmate Name:  
Reg. No.:  
Institution:  

1. TRULINCS Program - I am notified of and acknowledge that the Bureau of Prisons (Bureau) at the above-named institution is offering an opportunity for inmates to participate in the First Fund Limited Inmate Communication System (TRULINCS) program, whereby inmate-participants may send and receive electronic messages (e-mail) with members of the community.

2. Conditions of Participation - As a TRULINCS program participant, I am notified of, acknowledge, and voluntarily agree to the following conditions:
   a. Compliance with Program Procedures - I must abide by all terms prescribed in the TRULINCS Program Procedure (procedures), which I acknowledge having been notified of, received, read, and understood prior to signing this agreement.
   b. Voluntary Participation - My participation in the TRULINCS Electronic Messaging program is voluntary and I may decline participation, or withdraw at anytime, without penalty or cost, except as provided in the procedures related to fees which may have already been collected from me. In the absence of TRULINCS program participation, I may still maintain contact with persons in the community through written correspondence, telephone, and visiting, as provided in those relevant Bureau policies.
   c. User Fee - My TRULINCS program participation is conditioned on my payment of a fee for usage as prescribed in the procedures, and I authorize such fee(s) to be withdrawn directly from my inmate deposit fund account.
   d. Consent to Monitoring - I am notified of, acknowledge, and voluntarily consent to having my messages and transactional data (incoming and outgoing) monitored, read, retained by Bureau staff, and otherwise handled as described in the inmate Electronic Message Record System, Justice/BOP-013 (70 F.R 69594-01, November 16, 2005). I am notified of, acknowledge, and voluntarily consent that this provision applies to messages both to and from my attorney or other legal representative, and that such messages will not be treated as privileged communications.
   e. Warden’s Authority - The Warden may discontinue my participation in the TRULINCS program, or reject incoming/outgoing messages, whenever it is determined that my participation violates the procedures or otherwise jeopardizes the safety, security, or good order of the institution, or protection of the public. Additionally, my participation may be limited or discontinued at anytime, due to program unavailability resulting from system maintenance, notification. Any assignment or other reasons unrelated to my participation conduct.
   f. Inmate Discipline / Criminal Prosecution - Any use of the TRULINCS program in violation of the procedures may result in inmate disciplinary action and/or criminal prosecution.
   g. Administrative Remedy Program - Any grievances I may have related to the TRULINCS program may be raised through the Bureau’s Administrative Remedy Program.

3. ACKNOWLEDGMENT - As indicated by my signature below, I am notified of, acknowledge, and voluntarily agree to all the above provisions.

Inmate Name (printed/signed)  
Date

BOP FOIA 2018-06557-LIT 85 of 100
TRULINCS Warning Acknowledgment

Consent to Monitoring

No Exception for Legal Correspondence to Attorney

No Sharing of Passwords

Voluntary with Fees

Warden’s Authority
Sample Message – Acceptance by Public

Identifies Federal Prisoner Seeking to Add as a Contact

Accept or Block

Consent to BOP Monitoring

English and Spanish
• What does the BOP have?
• What can you get?
• How do you get them?

TELEPHONE CALLS
• What does the BOP record?
  ◦ TRUafone Calls
    • Outgoing
    • Incoming
    • Staff phones?
  ◦ Transactional data
• What can you get?
  ◦ Transactional data
  ◦ Recorded calls

• How far back?
  ◦ Recordings – 6 months
  ◦ Transactional data – 6+ months
  ◦ Exceptions
How do I get . . .

- Transactional data
  - Request For Inmate Telephone Transaction Data form

- Recorded telephone calls
  - Subpoena
  - Include Register No.
  - Retrospective ONLY
ROLES

• AUSA
• Case Agent
• BOP attorney
• BOP SIS staff

TELEPHONE CALLS
Can the Defense get records without the AUSA’s knowledge?

Yes, but ...
How can defense counsel get BOP records and information without telling the AUSA?

- Written authorization
- FOIA
- Court order
What can they get without telling the AUSA?

- With written authorization
  - Records of the authorizing individual
- Without written authorization
  - Public information
    - **Staff:** PS 1351.05, *Release of Information*, Attech. B
    - **Inmates:** 28 C.F.R. § 540.65(b)
Defense Subpoenas

- Trigger the Touhy regulations
- 28 C.F.R. § 16.21, et seq.
- PLEASE READ: 28 C.F.R. § 16.23(a)
  - ONLY the DOJ attorney “in charge of the case” can authorize release; after . . .
  - Consulting the “originating component”
  - Why?
EXCEPTIONS?

- Ex parte applications?
- Sealed subpoenas?
- Sealed orders telling the BOP not to talk to the assigned AUSA?
www.bop.gov

Call a BOP Attorney

BOP Information
THE CAT’S OUT OF THE BAG!

Can you guess what happened?

THE END

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