

## Do Not Record

*The unlawful and concerning common practice of recording privileged phone calls.*

Nine months into COVID-era lockdowns, jails nationwide continue to rely on phone and video technology as a viable alternative to in-person visitation. The safe and convenient option has proven to protect the health of inmates and staff while minimizing onsite foot traffic. Widespread usage of this technology has also revealed shocking security deficiencies and unlawful recording practices by some of the biggest names in inmate communication services.

A well-known video visitation provider is the latest outfit to make headlines for suffering a security breach that exposed thousands of inmate calls and confidential data. The company attributes the lapse to an accidental password gaffe. Unfortunately, a paltry explanation and pledge to improve security won't suffice as damage control. Why? Because among the trove of recorded and transcribed calls are legally protected conversations between inmates and their attorneys.



### Inmate Rights and Legal Wrongs

It's no secret that inmates generally waive any expectation of privacy when it comes to communication with the outside world. In fact, it's a condition of incarceration underscored by a prerecorded message aired by most jail telecommunication providers at the beginning of each outbound call. The disclosure clearly reminds inmates and call recipients that their conversations will be monitored and recorded. The well-known and long-held exception to this rule is phone calls between inmates and their attorneys.

But recording attorney-inmate phone calls is not merely a violation of privacy; it's a potential violation of constitutional rights. Per the Sixth Amendment, criminal defendants are guaranteed the right to counsel—a right the judiciary contends is largely defined by privacy of communication between defendants and their counsel<sup>1</sup>. In other words, Attorney-Client Privilege guarantees constitutional protection of confidential communication against disclosure and government intrusion.

### Implications of Unlawful Recordings

Offending Sixth Amendment protection can potentially compromise effective legal representation and a fair trial. What does that mean for you and your facility? Recording attorney-inmate phone calls can result in litigation nightmares, mistrials, and early release of inmates whose sentences are consequently amended.

Additionally, exposed recordings or transcripts of conversations can pose danger to inmates and their family and friends. Leaked details about crimes and transgressions often serve as the impetus for retaliation, harassment, and witness tampering.

## Repeat Offenders

The increased reliance on phone and video communication coupled with COVID-based visitation restrictions can hardly be blamed for the data breach and unlawful access to privileged calls. In fact, one of the most egregious cases dates back to 2015 when a Dallas-based telecom giant experienced a leak that exposed an estimated 70 million inmate calls. Further investigation revealed that at least 14,000 of those calls in the cache included recorded conversations between inmates and their attorneys<sup>2</sup>.

The same provider was embroiled in litigation the following year when it was discovered that over 227 attorney-inmate phone calls made from a detention center in Kansas were recorded and listened to. As a result, a federal judge ordered the early release of an inmate charged with drug-related crimes after ruling that her constitutional rights were violated. The Kansas Federal Public Defenders (KFPD) then pursued the early release of up to 217 additional inmates in connection with the same series of unlawful recordings<sup>3</sup>.

## More Questions Than Answers

A data breach exposing recorded calls is certainly reason enough to sound the alarm, but the more pressing question remains unanswered. Why were privileged calls being recorded in the first place? And in many cases, not only were they recorded but also stored on each company's proven-vulnerable server. Repeated requests for an explanation of the Attorney-Client Privilege violation from the companies in question were met with vague and deficient responses, among the most common being "software glitches" and "human error".

## Prodigy's Ironclad Safeguards

While unlawful recording and exposure of privileged calls by some of the biggest names in the industry continues to put a black eye on inmate telecommunications, one provider has managed to stay above the fray. To date, Prodigy Solutions, Inc. has never experienced a privacy or security breach regarding inmate communications, with special emphasis on privileged phone calls. A stroke of luck? Hardly.

CEO Brian Hartman attributes Prodigy's impeccable record to the company's commitment to ethical business practices, legal compliance, and the most advanced technology on the market. "Other vendors record privileged conversations and claim to block access to them, but that approach creates vulnerability to hacking or access by unauthorized users," he explains. "At Prodigy, we simply don't record privileged calls at all. Our software was designed to protect the rights of inmates while improving safety and security facility wide."

## Partnership & Protection

A nationwide transition from on-site visitation to phone and video is imminent. Now more than ever is it critical for jails to partner with an inmate communications provider like Prodigy who guarantees fail-safe security features, an impenetrable system, and fidelity to the law. In today's climate, it's the only way for facilities to insulate themselves from the nightmarish consequences of violating Attorney-Client Privilege.

1. Cover, Avidan Y. A Rule Unfit for All Seasons: Monitoring Attorney-Client Communications Violates Privilege and the Sixth Amendment; Cornell Law Review, July 2002.

2. Smith, Jordan; Lee, Micah "Not So Securus," The Intercept, November 2015.

3. Rizzo, Tony, "Woman freed from prison on revelations in Leavenworth prison phone call investigation," The Kansas City Star, October 2018.

For more information or to schedule a demo, please contact  
Prodigy Solutions at [sales@prodigytel.com](mailto:sales@prodigytel.com)

