People v. Loyd
(2002) __ Cal.4th __

ISSUE

May California jail and prison officials tape telephone and in-person conversations between inmates and their friends and associates for the purpose of gathering incriminating evidence? If so, does it matter that the request for taping came from a prosecutor?

FACTS

It all started with a murder. Actually, two murders, both committed by Christine Loyd. In 1991, she beat her 76-year old mother to death and left the body in the bathtub in Mrs. Loyd's home in Oakland, making it look like a slip-and-fall accident. And she was successful: The coroner listed the death as "ACCIDENTAL."

Then in 1994 Loyd murdered 59-year old Virginia Bailey in Mrs. Bailey's home in Berkeley. She then put Mrs. Bailey's body in a freezer, removed it two weeks later, put it on the floor in the living room and set the house on fire, expecting the body would be so badly burned the cause of death would never be determined. And it almost worked. But there was a sufficient amount of evidence—mostly circumstantial—to eventually charge Loyd with Mrs. Bailey's murder.

The motive for both murders was financial gain: Loyd killed her mother and Mrs. Bailey because she was handling their financial affairs and had been robbing them blind.

The Bailey murder case was assigned to Assistant Alameda County DA Tom Rogers for trial. As Rogers and Inspector Bob Conner started looking into it they learned of the "accidental" death of Loyd's mother. As they looked further, they saw some striking similarities between the two cases, and eventually became convinced that Loyd had killed her mother as well as Mrs. Bailey.

Because no criminal investigation was conducted into the death of Mrs. Loyd, Rogers and Conner had to start their investigation from scratch. As things progressed, they were able to develop some circumstantial evidence that Loyd murdered her mother, but not enough to charge her.

At this point Rogers requested the taping of Loyd's unprivileged conversations at Santa Rita Jail where she was awaiting trial on the Bailey case. Rogers had reason to believe that if Loyd had, in fact, killed her mother, there was a good possibility she would make incriminating statements to certain visitors while talking with them in person or on the phone. And that's what happened. Even though Loyd was aware her conversations were being monitored,[1] she made some incriminating statements that provided Rogers with the evidence he needed to charge her with murdering her mother.

A jury found Loyd guilty of both murders and she was sentenced to 55 years-to-life.

On September 28, 2000, a panel of the First District Court of Appeal affirmed the convictions. But in doing so, the three justices condemned Rogers for requesting the

---

[1] **NOTE:** In her appellate brief, Loyd's attorney acknowledged, "A tape of a phone call between appellant and Ann Argabrite in which appellant discussed the possibility of monitoring was admitted." The attorney also admitted there was testimony that "each inmate was given a copy of jail rules and regulations which contains an advisement about monitoring of phone calls." Furthermore, when the taping began the sheriff was operating an audio warning system that notified inmates as they made phone calls that their conversations may be monitored.

taping. Said the court, "We emphatically condemn this behavior, which unquestionably constituted misconduct not only as a deliberate invasion of defendant's rights but as a threat to such structural guarantees as the separation of powers and the supremacy of the judiciary in determining what the law is. . . . We denounce in the strongest terms the conduct which occurred here." The newspapers, of course, picked up on this provocative language and played it up. For example, the headline in *The Recorder* on October 2, 2000 was: "Alameda DA Blasted for Secret Taping."

Although the court acknowledged that Rogers' actions were lawful under the U.S. Constitution,[2] it "condemned" him for violating a 1982 California Supreme Court case: *De Lancie* v. *Superior Court*.[3] In *De Lancie,* a divided court interpreted California's "Prisoners' Bill of Rights" statute as granting prisoners a right to privacy in conversations with cellmates and visitors. Specifically, the court ruled that prisoners could reasonably expect such conversations would not be monitored, even if they knew they were being monitored, unless the monitoring was authorized by a warrant or conducted for purposes of institutional security.

DISCUSSION

The California Supreme Court ruled that when Loyd's jailhouse conversations were being taped, *De Lancie* had already been abrogated by statute. Consequently, there was no prosecutorial misconduct, and Loyd's conviction was affirmed.

In *De Lancie*, the court interpreted the so-called Prisoners' Bill of Rights—Penal Code sections 2600-2601—as expressing a legislative policy that jail and prison inmates had a right to privacy except to the extent that restrictions on their privacy were necessary for the limited purpose of institutional security or the protection of the public.

As noted, the monitoring of Loyd's jailhouse conversations was conducted for neither of these purposes—its sole objective was to obtain incriminating evidence. This is essentially why the Court of Appeal "condemned" the monitoring.

The Supreme Court observed, however, that in 1994 the Legislature amended § 2600 to permit infringement on an inmate's privacy if the infringement is "reasonably related to legitimate penological interests." This language—"legitimate penological interests"—significantly reduces the scope of an inmate's privacy under California law.[4] In fact, said the court, it effectively abolished all the privacy rights created by *De Lancie:*

> *[De Lancie]* no longer correctly states California law regarding inmate rights. Following the 1994 amendment to section 2600, California law now permits law enforcement officers to monitor and record unprivileged communications between inmates and their visitors to gather evidence of crime.[5]

---

[2] See *Lanza* v. *New York* (1962) 370 US 139, 143; *Hudson* v. *Palmer* (1984) 468 US 517, 525-8; *Donaldson* v. *Superior Court* (1983) 35 Cal.3d 24, 29-30.

[3] (1982) 31 Cal.3d 865.

[4] **NOTE:** The court in *Loyd* explained, the amendment "reflected the Legislature's desire to repeal the expansive protections afforded California inmates and replace them with the more limited protections available under federal law.

[5] **NOTE:** The court also pointed out that pre-*De Lancie* law "recognized as legitimate the interest in ferreting out and solving crimes. We thus observed that prior to *De Lancie*, the fact that a particular conversation was monitored not for security purposes but to gather evidence did not argue against admissibility." The court went on to say that, per *Loyd*, "Any restrictions on inmates' rights that were lawful prior to *De Lancie*, *a fortiori*, will be lawful under the current test."

DA's COMMENT

In a nutshell, the court in *Loyd* ruled that California law no longer prohibits the monitoring of a jail or prison inmate's unprivileged conversations, whether they occur in a jail visiting room or over a public telephone, or whether the purpose is institutional security or solving crimes.

As for federal law, the monitoring of a jail or prison inmate's unprivileged telephone conversations does not violate Title III of the Omnibus Crime Control and Safe Streets Act (18 USC §§2510 *et seq.*) if one party to the conversation consents to the taping. Such consent may be express or implied.[6] For example, express consent has been found when the prisoner signed a wiretap consent form.[7]

Most often, however, consent is implied from the fact that the prisoner engaged in a conversation over the telephone after being notified that such conversations may be monitored. Such notification typically is given by way of warning signs, handouts to inmates explaining the rules and regulations, and recorded messages that play automatically when an inmate places a call.[8] In Alameda County, all three methods are utilized.

---

[6] See *U.S.* v. *Van Poyck* (9th Cir. 1996) 77 F.3d 285, 292.
[7] See *U.S.* v. *Van Poyck* (9th Cir. 1996) 77 F.3d 285, 292; *U.S.* v. *Willoughby* (2nd Cir. 1988) 860 F.2d 15, 20.
[8] See *U.S.* v. *Paul* (6th Cir. 1980) 614 F.2d 115, 117; *U.S.* v. *Van Poyck* (9th Cir. 1996) 77 F.3d 285, 292; *U.S.* v. *Amen* (2nd Cir. 1987) 831 F.2d 373, 379.