

THE LEGAL AID SOCIETY

Justice in Every Borough.

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Contact:

Redmond Haskins
The Legal Aid Society
(929) 441-2384
rhaskins@legal-aid.org

*****FOR IMMEDIATE RELEASE*****

Legal Aid Renews Demand for Citywide Audit of all Privileged Attorney-Client Phone Recordings Following Egregious Privacy Breach

Legal Aid Previously Raised this Issue with DOC in May, 2020

(NEW YORK, NY) – The Legal Aid Society renewed its call on the de Blasio Administration for a citywide [audit](#) of all attorney-client phone recordings in response to [reporting](#) that over 1,500 privileged calls between people incarcerated in local jails and their attorneys were wrongly recorded.

Beginning last year, Legal Aid discovered that certain phone numbers provided to the New York Department of Correction (DOC) for the do not record (DNR) listings were still being recorded improperly. Indeed, prosecutors, who received these privileged materials from DOC, were providing defense counsel copies of attorney-client calls made from DOC facilities as discovery materials. Legal Aid raised grave concerns about this improper recording with DOC and the Mayor's Office of Criminal Justice (MOCJ) on May 29, 2020.

On June 16, 2020, Legal Aid again [provided phone listings](#) for inclusion on DOC's DNR list, and urged DOC and MOCJ to investigate, audit and disclose the following:

- (1) the dates and times of all such recordings;
- (2) the dates and times on which they had been accessed in any fashion; and
- (3) the persons who accessed them and agencies in which they were employed.

In addition, Legal Aid asked DOC and MOCJ to take all necessary steps to ensure that, pending further notice, the affected recordings are not accessed by law enforcement personnel or members or agents of a District Attorney's office.

On September 10, 2020, DOC confirmed that all our phones listed were incorporated into the DNR list.

- In a letter issued today, Legal Aid again demanded that all numbers listed be audited to ensure that no recordings were made, to sequester and disclose any such recordings, and provide information regarding access to such recordings by law enforcement and/or district attorney offices, as set forth below:

- Please identify the dates and times of all recordings of calls made to or from these cell phone numbers (“Affected Recordings”) between February 20, 2020 and February 28, 2021;
- Please identify the dates and times on which Affected Recordings were accessed in any fashion (for example, listened to, copied, or downloaded) by DOC personnel, Department of Investigations (DOI) personnel, law enforcement personnel, and/or members or agents of a District Attorney’s office.
- To the extent known, for each such access, please identify the persons who accessed such Affected Recordings and the agency or agencies in which they were employed; the persons to whom copies of Affected Recordings were provided and the agency or agencies in which they were employed; the dates and times on which the Affected Recordings were provided to such persons; and the Docket or Indictment number of any case to which the Affected Recordings related.
- Please take all steps necessary to ensure that, pending further notice, unless so ordered by a court of competent jurisdiction, Affected Recordings are not accessed in any fashion by DOC personnel, DOI personnel, law enforcement personnel, or members or agents of a District Attorney’s office.

“We first approached the City about this systemic failure over ten months ago, and thus DOC’s contention that these issues were not raised by defenders until late last year is simply false,” said **Tina Luongo, Attorney-in-Charge of the Criminal Defense Practice at The Legal Aid Society**. “We are renewing our demand for a citywide audit, and, as issued earlier, call for an [end](#) to all recordings of phone calls from our incarcerated clients, and demand that the City not renew its contract with Securus, which is scheduled to expire at the end of this month.”

The letter states:

The Legal Aid Society previously provided DOC with a comprehensive list of phone numbers to be added to a Do Not Record (DNR) list. By following this process, DOC is supposed to be prevented from recording calls between our clients held at DOC facilities and our staff on a listed phone. Nevertheless, recent DOC audits of sample calls reveal that recording continues. I am renewing our prior requests and demand an investigation and audit of all phone number listings provided by The Legal Aid Society to be added to the DNR listing to ensure that recordings have not occurred and to provide full disclosure of any recordings as set forth below.

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The Legal Aid Society exists for one simple yet powerful reason: to ensure that New Yorkers are not denied their right to equal justice because of poverty. For 145 years, we have protected, defended, and advocated for those who have struggled in silence for far too long. Every day, in every borough, The Legal Aid Society changes the lives of our clients and helps improve our communities. www.legalaidnyc.org