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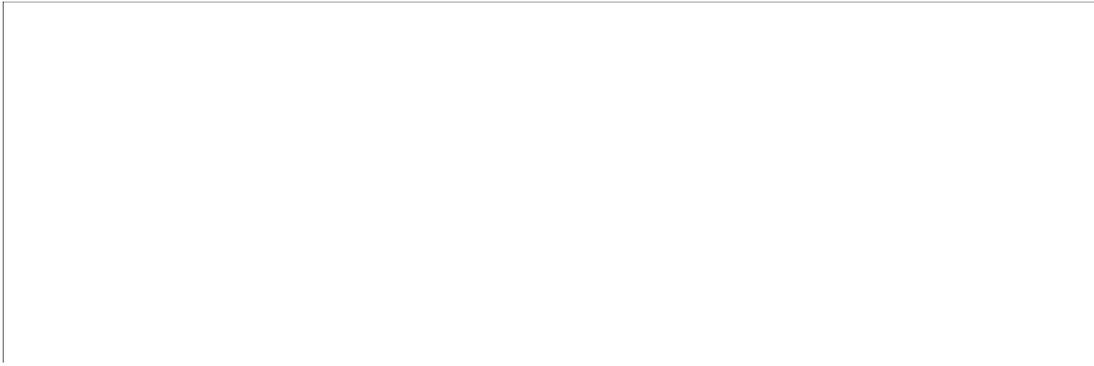
Leavenworth CCA phone provider was accused of recording attorney calls in Texas

Securus: After every allegation, system is checked and has always been found to work.

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The continuing disclosures surrounding recordings at the detention center, run by Corrections Corporation of America, has frustrated lawyers. Attorney-client privilege is a bedrock principle of the American legal system — a protection defense attorneys argue was violated at Leavenworth.

It is unknown at this point how many attorney-client calls were recorded at Leavenworth, and how many attorneys were recorded despite requests to be shielded. Nor is it known why one attorney's calls were recorded despite his requests otherwise.

Securus — a Texas company that provides services to jails and prisons across the country, — told The Topeka Capital-Journal that the Leavenworth facility was responsible for designating the attorney's number as a private, non-recorded number. The company acknowledged allegations have been made in other places in the past regarding recording checks its system each time and has always found it works properly. CCA didn't respond to questions about the recordings. Attorneys were also hesitant to speak, citing ongoing litigation over the issue in federal court. Doug Bonney, legal director for the American Civil Liberties Union of Kansas, said any attorney who has ever represented someone detained at the facility needs to request records of their calls.

"Every lawyer that has had clients up at CCA should find out now. They're on notice," Bonney said. "I think they owe it to their clients to take action to make sure those records are segregated."

Texas lawsuit

In 2014, a coalition of lawyers sued the Travis County Sheriff, local prosecutors and Securus over jailhouse phone recordings. Travis County includes the city of Austin.

The attorneys said the sheriff's department told the public that it doesn't record attorney-client calls. The reality, they alleged in their federal lawsuit, was that Securus and the sheriff's department did record calls and turned the recordings over to prosecutors.

✘ Bukowsky didn't respond to a message left with a receptionist at her firm this week.

"I was in the thrust of litigating with the state attorney general's office a very hotly disputed habeas petition, and I was acting under good faith that they were not recording," Bukowsky told The Intercept.

Kansas recordings

In Kansas, concerns arose in early August over recordings. Disclosures coming as part of a prosecution of a drug-and-contraband operation within Leavenworth CCA revealed video recordings of attorney-client meeting rooms.

The U.S. Attorney's office, which is prosecuting the cases, obtained the video and subsequently turned it over to defense attorneys during the discovery process. Prosecutors have said they did not view the video.

Filings by the Federal Public Defender's office also said phone calls between attorneys and inmates had been recorded. Prosecutors have suggested the calls may not be privileged. The inmate handbook details the procedures for setting up an unrecorded attorney call, and attorneys can request that their numbers be placed on a private, do-not-record list.

In early September, Public Defender Melody Brannon made a shocking claim: attorney-client calls had been recorded even after multiple requests by an attorney that his state%2f2016-09-16%2fleavenworth-cca-phone-provider-was-accused-recording-attorney-calls-texas

As proof, she offered an affidavit from Gary Hart, a Kansas City-area defense attorney. In his sworn statement, Hart asserts that he requested and received access to state%2f2016-09-16%2fleavenworth-cca-phone-provider-was-accused-recording-attorney-calls-texas

The recordings were made despite letters from Hart to the warden at Leavenworth CCA beginning in 2001 and through 2014 asking that his calls not be recorded. state%2f2016-09-16%2fleavenworth-cca-phone-provider-was-accused-recording-attorney-calls-texas

"The government's last resort — that the defendants or counsel had an affirmative obligation to tell CCA to forgo recording attorney-client phone calls — fails because there was no mechanism by which to ensure that the calls were not recorded," Brannon wrote in a court filing.

Both Brannon and Hart declined interview requests.

In response to questions, Securus said Hart had made the request to the facility.

"It's the facilities' responsibility to designate the calls as they see fit. Our system will not record calls as long as the attorney number has been designated as 'private.' This designation is the responsibility of the attorney and facility/agency," spokesman Russell Roberts said in a statement.

× Roberts said if a call was recorded, the attorney would have heard a warning that the call could be recorded. "In no instance" would a call be recorded without the admonishment playing, he said. Conversely, if a call was not recorded, the admonishment would not play.

Asked if Hart's number was listed as private in the Securus system, Roberts responded that the information is confidential and Securus doesn't have permission to release it.

Allegations regarding recordings have been made in other jurisdictions, Roberts acknowledged. Each time, Securus rechecks its system, he said. The company connects millions of attorney calls, he said, and more than 130 million calls every year.

"We have had this allegation come up before — in all cases, the system works properly, as long as the facility designates attorney calls as private," Roberts said, adding: "Note again, it's the facilities' responsibility to designate attorney calls as private — not Securus' responsibility."

U.S. District Court Judge Julie Robinson has said she will appoint a special master to investigate the recordings. She indicated the special master's first task will likely be to assess the extent of potential Sixth Amendment violations.

Free and open communication between attorneys and their clients is crucial, Bonney said.

Additionally, many criminal defendants are hesitant to trust anyone, including lawyers, making attorney-client privilege key to proper representation

"In criminal cases, attorney-client privilege is particularly important," Bonney said. "Any breach of it harms the relationship between lawyer and client, which is something which is fragile anyway."

RELATED: Report from The Intercept (https://theintercept.com/2015/11/11/securus-hack-prison-phone-company-exposes-thousands-of-calls-lawyers-and-clients)

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